



2014-099

STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

LUTHER STRANGE
ATTORNEY GENERAL

September 30, 2014

501 WASHINGTON AVENUE
P.O. BOX 300152
MONTGOMERY, AL 36130-0152
(334) 242-7300
WWW.AGO.ALABAMA.GOV

Honorable Spencer Collier
Secretary, Alabama Law Enforcement Agency
201 South Union Street, Suite 300
Post Office Box 304115
Montgomery, Alabama 36130-4115

Alabama State Law Enforcement Agency –
Retirement Benefits – Law Enforcement
Officers – Employees, Employers,
Employment – State Departments and
Agencies

A person with state policeman's retirement
from a legacy agency appointed to a law
enforcement classification in the Alabama
State Law Enforcement Agency after
January 1, 2015, would maintain state
policeman's retirement.

Dear Mr. Collier:

This opinion of the Attorney General is issued in response to your
request.

QUESTION

Would a legacy-agency employee defined as a
state policeman for purposes of retirement (e.g., ABC
agent, DPS trooper) under section 36-27-1(23) of the
Code of Alabama who, after January 1, 2015, is
appointed pursuant to the rules of the State Personnel
Board to a position in a law enforcement classification
specific to the Alabama State Law Enforcement
Agency, maintain the same retirement benefits existing
before the change in classification?

FACTS AND ANALYSIS

Your request states as follows:

The employees from legacy agencies, who are in law enforcement classifications, fall under a different State Employees' Retirement System plan. Those plans are: Tier 1 State Police Retirement, Tier 2 State Police Retirement, Tier 1 State Law Enforcement Retirement, and Tier 2 State Law Enforcement Retirement.

Act 2013-67 created the Alabama State Law Enforcement Agency ("ALEA"). This act is codified in section 41-27-1, *et seq.*, of the Code of Alabama. ALA. CODE §§ 41-27-1 to 41-27-9 (2013). ALEA was established to coordinate public safety in the state. ALA. CODE § 41-27-1 (2013). Section 41-27-2(a) provides for a Secretary of ALEA ("Secretary") to act as the executive head of the agency. ALA. CODE § 41-27-2(a) (2013). The Secretary assumes the duties of the Department of Homeland Security, including the Alabama Fusion Center. ALA. CODE § 41-27-2(d) (2013).

The act also provides for the merger with, reorganization within, or transfer to ALEA, either within or outside the Secretary's office, of certain law enforcement agencies, units, divisions, and employees, in sections 41-27-3, 41-27-5, and 41-27-6. These sections become effective on January 1, 2015.

The Dignitary Protection Services of the Alabama Department of Public Safety ("DPS") will move to the Secretary's office as the Protective Services Unit. ALA. CODE § 41-27-3(c)(1) (2013). Investigators/analysts in the Alabama Computer Forensics Labs of the Office of Prosecution Services will be transferred to the Fusion Center. ALA. CODE § 41-27-3(d) (2013).

The Alabama Bureau of Investigation will merge outside the Secretary's office as the State Bureau of Investigations ("SBI"). ALA. CODE § 41-27-5(a) (2013). The Alabama Criminal Justice Information Center will merge with SBI. ALA. CODE § 41-27-5(c) (2013). SBI will be vested with the investigative functions of the law enforcement and investigative units of the Alabama Alcoholic Beverage Control Board, the Alabama Forestry Commission, and the Department of Agriculture and Industries. ALA. CODE § 41-27-5(d)(1)-(3) (2013).

DPS will likewise merge outside the Secretary's office. ALA. CODE § 41-27-6(a)(1)-(3) (2013). The Highway Patrol Division of DPS will be vested with the functions of the law enforcement unit of the Public Service Commission and the revenue enforcement officers of the Department of Revenue. ALA. CODE § 41-27-6(b)(1)a. & b. (2013). The Marine Police Division will be created within DPS and will be vested with the functions of the Marine Police Division of the Department of Conservation and Natural Resources. ALA. CODE § 41-27-6(c)(1) & (2) (2013).

Section 41-27-7 governs the status of the employees transferred to ALEA as part of the merged or reorganized entities above. Section 41-27-7(a) designates those entities as “legacy agenc[ies].” ALA. CODE § 41-27-7(a) (2013). The statute repeatedly emphasizes that the benefits of legacy-agency employees will not change. Section 41-27-7(c) addresses the time of transfer, stating that “[a]ll persons employed on January 1, 2015, with a legacy agency and transferred to [ALEA], [DPS], or [SBI] **shall maintain his or her** classification and **benefits under the legacy agency.**” ALA. CODE § 41-27-7(c) (2013) (emphasis added). The section goes on to state, more specifically, that these employees “**shall not receive a decrease in** salary, **benefits**, or seniority or otherwise receive a decrease in classification.” *Id.* (emphasis added).

Furthermore, section 41-27-7(d) clarifies that “[a]ny **future change in classification shall not result in any change in benefits** an employee previously had at a legacy agency.” ALA. CODE § 41-27-7(d) (2013) (emphasis added). This language is not qualified. Therefore, the mandate that benefits remain the same applies equally to legacy employees, regardless of the retirement plan they enjoyed at the legacy agency.

CONCLUSION

A person with state policeman’s retirement from a legacy agency appointed to a law enforcement classification in the Alabama State Law Enforcement Agency after January 1, 2015, would maintain state policeman’s retirement.

I hope this opinion answers your question. If this Office can be of further assistance, please contact Ward Beeson of my staff.

Sincerely,

LUTHER STRANGE
Attorney General
By:



BRENDA F. SMITH
Chief, Opinions Division