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DEPARTMENT OF JUSTICE
CIVIL DIVISION
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OPINION 21-0040A

Maris E. LeBlanc
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Municipal Employees' Retirement
System of Louisiana
7937 Office Park Blvd.
Baton Rouge, Louisiana 70809

92-A-2(d) RETIREMENT - Municipal Employees
La. R.S. 11:1731, *et. seq.*

There is no prohibition on a parish's voluntary contributions to MERS on behalf of a marshal. In the event the parish does not make such contributions, the MERS employer remains liable for contributions on all sources of the marshal's earnings.

Dear Ms. LeBlanc:

Our office received your request for an opinion concerning retirement contributions for elected marshals enrolled in the Municipal Employees Retirement System (hereinafter "MERS"), a *statewide* public retirement system.¹ You have requested clarification regarding a parish's ability to make retirement contributions on behalf of a marshal, in light of prior opinions issued by this office, *i.e.*, Louisiana Attorney General Opinion Nos. 20-0046 and 21-0040.

Both opinions involved questions regarding a parish's statutory obligation to contribute to the salary and retirement benefits of the city court marshal. Louisiana Revised Statute 18:1883 sets forth minimum salaries for certain city court marshals that are to be paid in equal proportions by the respective governing authorities of the city and parish. We opined in La. Atty. Gen. Op. Nos. 19-0037, 20-0046, and 21-0040 that retirement contributions do not count towards the minimum salaries established by La. R.S. 13:1883. Regarding retirement contributions, our office opined that:

In order to determine which of the governing authorities may be required to provide a contribution to the retirement system for your retirement, we must first determine who is considered your "employer" for retirement purposes. Your "employer" or "participating employer," as defined by La. R.S. 11:1732(14), is the City of Ruston, since it is an incorporated city in the state. Conversely, Lincoln Parish does not meet any provisions within La. R.S. 11:1732(14) and is not considered your employer for purposes of retirement contributions. The governing authority for the City of Ruston is required to contribute to MERS for your retirement.²

¹ MERS is one of nine public retirement systems whose benefits are not guaranteed by the Constitution, collectively referred to as *statewide* public retirement systems. La. R.S. 11:4(B)(1)(e).

² La. Atty. Gen. Op. No. 20-0046.

These opinions reflect that only *employers* or *participating employers* can be legally compelled to contribute to MERS, and a parish does not qualify as a MERS *employer* as defined in La. R.S. 11:1732(14).³

As background, you relay, MERS membership currently includes 32 marshals and each is deemed an employee of the municipality served. For six of these members, retirement contributions are jointly made by the respective city and parish. MERS is funded in part by contributions from both the member and the employer.⁴ Member contributions are based on a member's *earnings* as defined in La. R.S. 11:1732(12).⁵

In light of the foregoing, you ask whether a parish may voluntarily make employer contributions on a marshal's behalf and, in doing so, is the parish then obligated to collect and remit member contributions. In the event the parish does not make contributions, is the city then obligated to contribute on "all sources of earnings" for the marshal, including salary funded by the parish, state supplemental pay, and fees and commissions?

Louisiana Revised Statute 13:1883 contemplates that the respective governing authorities of the city and parish may by agreement provide additional compensation to the marshal. Thus, the city and parish may by agreement provide additional compensation and the parish is not prohibited from contributing to the marshal's retirement.⁶ Likewise, we find nothing expressly prohibits a non-participating employer from collecting and remitting member contributions to MERS under these circumstances.

According to the MERS governing provisions in La. R.S. 11:1864, liability for contributions remains with the *employer*. Therefore, it is the opinion of this office that in the absence of a parish's voluntary contributions a city remains liable to provide employer contributions on *all sources* of the marshal's earnings as defined in La. R.S. 11:1732(12).⁷ Although, the statutory definition of *employer* does not include the parish, the statutory scheme in La. R.S. 13:1883 contemplates a shared responsibility between the respective governing

³ La. Atty. Gen. Op. No. 18-0048.

⁴ MERS is also funded by dedicated taxes as mandated in La. Const. art. 10, §29(E).

⁵ *Earnings* does not include "bonuses or fees in excess of regular salary or retainer, overtime pay, or payments relative to termination of employment including but not limited to accrued sick or annual leave and severance pay." La. R.S. 11:1732(12)(a).

⁶ Compare La. R.S. 11:1751(F), providing in part, "any person who qualifies as an employee pursuant to R.S. 11:1732(13)(b) shall participate in and contribute to the system on all earnings from **all participating employers**. Nothing in this Subsection shall be construed to grant any additional service credit above what would have been earned if all such earnings of the employee were paid by a single participating employer." Emphasis added.

⁷ *Earnings* is defined as "the full amount of compensation earned by a member for service rendered as an employee, excluding bonuses or fees in excess of regular salary or retainer, overtime pay, or payments relative to termination of employment including but not limited to accrued sick or annual leave and severance pay" and includes "supplemental salary received from the state of Louisiana, fees received for service of civil papers, commissions received as a result of sales and garnishments pursuant to R.S. 13:5807, and any taxable vehicle allowance but only applicable to those persons serving as city marshal or deputy city marshals of Bossier City or Ruston on June 30, 2003."

authorities that should be adhered to in deciding how retirement contributions will be remitted to MERS.

We hope that this opinion has adequately addressed the legal issues you have raised. If our office can be of any further assistance, please do not hesitate to contact us.

With best regards,

JEFF LANDRY
ATTORNEY GENERAL

BY: 

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