

RETIREMENT

State Employee Retirement Lawsuit Brings Welcome News

BY TONI DAVIS

On Sept. 6, Superior Court Judge Joseph R. John, Sr., ruled in favor of state employees who sued Gov. Mike Easley over his 2001 diversion of more than \$130 million of employer contributions to the Teachers' and State Employees' Retirement System.

The state employee plaintiffs, also SEANC members, brought the lawsuit, *Stone et al. v State of North Carolina*. Upon reading the order, SEANC Executive Director Dana Cope said, "We're happy because we knew this was the case all along. If one thing should be sacred, it's this."

In his order, Judge John agreed with the state employee plaintiffs that the State of North Carolina had violated Article V, Section 6 of the North Carolina Constitution, which reserves retirement funds for payment of benefits and system administration.

As of press time, the judge had yet to rule on whether the state of North Carolina violated the U.S. Constitution's Contract Clause, Article I, Section 10,

"No State shall ... pass any ... Law impairing the Obligation of Contracts." Both parties will decide whether or not to appeal after the judge's ruling on this provision.

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Our View: On appeal, violating Section 6 will still be unconstitutional.

A Superior Court judge has ruled that Gov. Mike Easley and others violated the state's constitution by diverting \$130 million from the state employees' pension plan to help balance the budget in 2001. It would be good to hear Gov. Easley, a former prosecutor and attorney general, say something more convincing than that his heart was in the right place and, besides, he found a loophole.

Easley does not — cannot — deny using the money. It was in all the papers. More important, it can still be found in the state's official records. So it's hard to understand how he can profess not to see the conflict with Section 6, which says, in part: "Neither the General Assembly nor any public officer, employee, or agency shall use or authorize to be used any part of the funds of the Teachers' and State Employees' Retirement System or the Local Governmental Employees' Retirement System for any purpose other than retirement system benefits and purposes," etc.

There is an exception in Section 6, but Easley didn't invoke it (because it wouldn't have suited his purpose). Instead, he explains that (A) the money allocated for the retirement system had not been disbursed to the pension accounts before he swiped it; (B) he put some of it back, and had a program in place to put more of it back; (C) no payouts were actually stopped by his action, and (D) he had to do it because the constitution requires a balanced budget.

Play around with the first three all you like. They all add up to one big attempt to talk his way around

the fact that he did what the constitution forbids.

The fourth — an insistence that he had a constitutional duty to violate the constitution — deserves special attention.

On its face, his claim that raiding the pension plan was necessary is absurd. He could have refused to pay employees still on the payroll. He could have sold public property on the sly. He could have robbed banks. Any of that would have been just as illegal as raiding the pension plan, but they are in fact alternatives to the illegal thing he says was necessary.

Worse, this notion that one constitutional mandate pre-empts another sounds way too much like President Bush's assertion that he has "inherent" power as commander in chief of the armed forces to operate an entire surveillance program whose purpose is to evade an act of Congress and frustrate the assurances of the Fourth Amendment.

If it really is necessary, then Easley should be heading a campaign to rewrite the constitution and subordinate pension plans, education and other constitutionally protected endeavors to budget-balancing.

The better approach, of course, would be to square his shoulders, clear his throat and say, "I did it and I was wrong." But such things are so 20th-century.

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Hands off state trust funds

Now that a judge has rejected Gov. Mike Easley's 2001 raid on the state employees' pension plan, maybe he and legislators will get the message and stop balancing budgets through sleight of hand.

Easley has defended diverting \$225 million in state contributions to the plan, saying it was his legal duty to erase a \$850 million deficit and balance the state's budget.

The General Assembly has made annual payments to replace the money. A \$30 million installment, the fourth of five payments, was included in this year's budget. But that could still leave the fund short by \$83 million when interest is taken into account, said Hardy Lewis, attorney for the state employees.

While we understand certain pots of state money may make tempting targets during budget emergencies, the law is the law, all the more so when it's based on the state constitution. The governor violated a state constitutional provision requiring the retirement funds be used for that purpose alone, the court ruled.

Fourteen current and former state workers sued in June 2002, saying the diversion of the funds jeopardized the North Carolina Teachers' and State Employees' Retirement System. While the transfer did not delay or reduce any pension checks, opponents said it set a bad precedent and threatened future cost-of-living increases, the Associated Press reported last week.

Superior Court Judge Joseph John ruled Sept. 6 that Easley and other state leaders violated the state constitution. It says retirement funds "shall not be applied, diverted, loaned to, or used by the state, any state agency, state officer, public officer or public employee."

Seems pretty clear to us. It doesn't matter that it was the state's contribution to the fund and not the employees'. Nor does it matter that Easley diverted the money before it ever made it into the fund.

This is not the first time leaders have raided the pension fund, or used money dedicated for a specific purpose to balance the budget when revenues fell short or spending got out of hand. Nor has the problem been confined to Democratic administrations such as Easley's.

Former Gov. Jim Martin, a Republican, withheld money from the pension fund during a 1991 budget crisis. And since 2002, the governor and General Assembly have grabbed about \$1 billion from the Highway Trust Fund for the general fund, according to the John Locke Foundation, a conservative Raleigh think tank.

The Highway Trust Fund gets 99 percent of its money from the state's motor vehicle fuel tax and is supposed to be used solely for building roads. The quality of North Carolina's roads has dropped steadily in recent years despite the fact that motorists here pay the highest gas taxes in the South.

The message from Judge John's ruling is clear. The governor and Legislature should have the fiscal discipline to curb spending and balance the budget without raiding funds earmarked for vital state needs.

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