



OFFICE OF THE ATTORNEY GENERAL
STATE OF ARIZONA

TERRY GODDARD
ATTORNEY GENERAL

October 9, 2008

Mr. Mark Spencer, President
Phoenix Law Enforcement Association
1102 West Adams Street
Phoenix, AZ 85007

Dear Mark:

Thank you for your September 25, 2008 letter regarding the Public Safety Personnel Retirement System ("PSPRS"). You have asked for a legal opinion regarding the propriety of "upper level police managers" retiring from a law enforcement agency but then being rehired by the same agency "with a different title and some additional responsibilities." You have raised interesting questions, but a review of the pertinent statutes and consultation with my staff lead me to conclude that there is no appropriate role for my Office with regard to your inquiry.

Members of the Phoenix Law Enforcement Association provide immense public service to residents of the City of Phoenix, and I appreciate your members' service. However, PLEA is not a state agency. Under Arizona law, my Office is only permitted to provide legal services and opinions to departments and agencies of the State of Arizona, and may not render legal opinions to private individuals or entities. A.R.S. § 41-192.

The Arizona Legislature has delegated responsibility for general administrative oversight of PSPRS to the Fund Manager pursuant to A.R.S. § 38-848. Responsibility for oversight of the Deferred Retirement Option Plan has been delegated to the fund manager pursuant to A.R.S. § 38-844.02. The Legislature has delegated the "administration of the system and the responsibility for making the provisions of the system effective for each employer" to PSPRS local boards. A.R.S. § 38-847. My office does not represent the fund manager or the Phoenix local board.

Although I cannot assist you directly, with copies of this letter I am forwarding your letter and the packet you submitted to me to the PSPRS manager and PSPRS's attorney for their review.

Sincerely,

A handwritten signature in dark ink, appearing to read "Terry Goddard", written over a horizontal line.

Terry Goddard
Arizona Attorney General

Copies with enclosures to:

James M. Hacking, Administrator
Public Safety Personnel Retirement System
3010 East Camelback Road, Suite 200
Phoenix, AZ 85016-4416

Marc R. Lieberman, Esq.
Kutak Rock LLP
8601 North Scottsdale Road
Scottsdale, AZ 85253-2742



ATTORNEY GENERAL
Criminal Division

MEMORANDUM

TO: Terri Skladany
Chief Deputy

FROM: Donald E. Conrad *DEL*
Criminal Division Chief Counsel

DATE: September 25, 2008

RE: Letter from Phoenix Law Enforcement Association (PLEA)

The attached letter dated September 25, 2008, from PLEA was delivered to our office addressed to the Attorney General. The letter requests a legal opinion concerning A.R.S. § 38-849.D relating to police pensions. I'm certain it was delivered to one of our investigators because it was a letter from PLEA. As it is not a criminal matter, I am forwarding it to you to ask that you assign it for consideration with one of our civil lawyers.

I am also advised that PLEA let it be known at the time of delivery of the letter that this matter was also being distributed to the media. I intend to alert Steve Wilson and Anne Hilby about the delivery of the letter and to assist in formulation of a response if there is an inquiry. A copy was also given today to the AG.

38-849. Limitations on receiving pension; violation; classification; reemployment after severance; reinstatement of service credits; reemployment of retired or disabled member

D. If a retired member is reemployed by an employer, no contributions shall be made on the retired member's account, nor any service credited, during the period of such reemployment. **Notwithstanding this subsection, if a retired member subsequently becomes employed in the same position by the employer from which the member retired, the system shall not make pension payments to the retired member during the period of reemployment.** On subsequent termination of employment by the retired member, the retired member is entitled to receive a pension based on the member's service and compensation before the date of the member's reemployment. If a member who retired under disability is reemployed by an employer as an employee, that member shall be treated as if the member had been on an uncompensated leave of absence during the period of the member's disability retirement and shall be a contributing member of the system. For the purposes of this subsection, "same position" means the member is in a position where the member performs duties and exercises authority that are the same duties that were performed and the same authority that was exercised by the member before the member's retirement.