



STATE OF ARKANSAS
ATTORNEY GENERAL
LESLIE RUTLEDGE

Opinion No. 2015-104

December 16, 2015

The Honorable Dan M. Douglas
State Representative
6251 SW Regional Airport Blvd
Bentonville, AR 72712-9449

Dear Representative Douglas:

This is in response to your request for my opinion on the following questions concerning the Deferred Retirement Option Plan (DROP) of the Arkansas Local Police and Fire Retirement System (LOPFI):

- (1) Is a DROP participant whose covered employment has been terminated before the conclusion of the maximum years of DROP participation prohibited from transferring from one LOPFI covered position to another LOPFI covered position?
- (2) If the answer to the previous question is "no," is a DROP participant who fears his or her covered employment with a LOPFI employer may be terminated before the conclusion of the maximum years of DROP participation prohibited from transferring from LOPFI covered position to another LOPFI covered position?
- (3) If the answer to either of the previous questions is "no," is a DROP participant required to remain unemployed for a specified amount of time before transferring to another LOPFI covered position?

RESPONSE

In my opinion, there is no provision for transferring to another LOPFI-covered position after the DROP participant's employment has been terminated. It is therefore my opinion that the answer to your first question is "yes," such a transfer is prohibited. Questions 2 and 3 are consequently moot.

DISCUSSION

In certain circumstances, retired former members of LOPFI can reenter "covered employment"¹ and again become members of LOPFI.² But participants in LOPFI DROP are specifically excluded from this "re-employment option."³ A rule of the LOPFI board also states that "[m]embers enrolled in DROP are not eligible to return to LOPFI-covered service as provided in A.C.A. 24-10-504."⁴

I have found no other provision similar to this "re-employment option" that would authorize a DROP participant to transfer to another LOPFI-covered position after his employment has been terminated. I must therefore conclude that such a transfer is prohibited.

Under the LOPFI DROP,⁵ a person who is eligible to retire may elect to continue to work for a limited time during which the receipt of retirement benefits is

¹ "Covered employment" means "employment as a police officer or firefighter in a position covered by the system." Ark. Code Ann. § 24-10-102(11) (Repl. 2014).

² See Ark. Code Ann. § 24-10-504(c)(2) (Repl. 2014).

³ *Id.* at § 24-10-504(c)(2)(A)(i) (stating in relevant part that "the former member may again become a member with previous credited service restored and increased by the period of reemployment, but only if the former member ... [w]as not a participant in the [DROP] under § 24-10-701.") (Emphasis added).

⁴ LOPFI Rules and Regulations, Rule #32 (last amended June 4, 2015). The LOPFI board is vested with "[t]he general administration and the responsibility for the proper operation of the [system] and for making effective the provisions of this chapter...." Ark. Code Ann. § 24-10-201(a) (Repl. 2014).

⁵ LOPFI DROP is codified at Ark. Code Ann. §§ 24-10-701—709 (Repl. 2014 and Supp. 2015). The LOPFI system was created in 1981 and generally covers police officers and firefighters first employed after the "operative date" of the system, as well as system administrative staff. Ark. Code Ann. § 24-10-301 (Repl. 2014). See also Ark. Code Ann. § 24-10-102(22) (Repl. 2014)

deferred.⁶ This retirement option is available to LOPFI members who have at least 28 years of service, or members who are at least age 55 and have at least 20 years of service.⁷ There is no additional accrual of service credit once a LOPFI member enrolls in DROP.⁸ Under the terms of the plan, the member continues to work and receive a salary, but a certain percentage of the monthly retirement benefit to which the member would have been entitled if he had actually retired is paid into the member's "plan account,"⁹ with interest credited annually.¹⁰

The maximum period of participation in LOPFI DROP is seven years.¹¹ A LOPFI member may therefore participate in DROP for fewer than seven years, with DROP participation ending (and benefits being paid) in conjunction with the termination of employment:

At the conclusion of a member's participation in the plan, the member shall terminate employment with the employer and shall start receiving the member's monthly retirement benefit that would have been received if the member had retired at the time the member elected to participate in the plan.¹²

The LOPFI DROP participant thus receives his deferred benefit when employment terminates.¹³ The requirement that the member "terminate employment" "[a]t the

(defining "member"). The DROP option was added to the system in 2003. *See* Acts 2003, No. 1734.

⁶ Ark. Code Ann. § 24-10-701(a) (Supp. 2015).

⁷ Ark. Code Ann. § 24-10-701(a).

⁸ Ark. Code Ann. § 24-10-702(c) (Supp. 2015).

⁹ Ark. Code Ann. § 24-10-703(c) (Repl. 2014) (the percentage paid into the account depends upon the member's years of service).

¹⁰ Ark. Code Ann. § 24-10-704(b) ((Repl. 2014).

¹¹ Ark. Code Ann. § 24-10-706(a) (Repl. 2014) ("The duration of participation in the [DROP] for active paid service police officers and firefighters shall not exceed seven (7) years.").

¹² *Id.* at 24-10-706(b).

¹³ The DROP account into which retirement benefits have been paid is either paid over in a lump sum or annuitized, at the DROP participant's option. Ark. Code Ann. § 24-10-705 (Repl. 2014).

conclusion of ... participation in [DROP]" makes it clear that the member who continues to work for the full seven-year period must leave employment at the end of the seven years. If employment ends earlier—whether voluntarily or involuntarily—the benefits will be paid, as employment will have terminated.

Retirement benefits therefore commence at the point the LOPFI DROP participant's employment is terminated, regardless of when termination occurs (whether before or after seven years), and regardless of whether it is voluntary. Participation in LOPFI DROP has concluded at that point and the former DROP participant ceases to be a member of the system, consistent with the general system requirement that "[u]pon a member's retirement, he or she shall cease to be a member."¹⁴

No provision is made for the former DROP participant's return to LOPFI-covered employment. Indeed, as noted above, LOPFI DROP participants are specifically excluded from the "re-employment option" available to former members who have retired.

Nor has my research yielded any other provision similar to the re-employment option that would provide authority for a DROP participant to transfer to another LOPFI-covered position after his employment has been terminated. I must therefore conclude that the answer to your first question is "yes," such a transfer is prohibited. Your remaining questions are consequently moot.

Sincerely,



LESLIE RUTLEDGE
Attorney General

¹⁴ Ark. Code Ann. § 24-10-504(b)(1) (Repl. 2014).