

ELIZABETH A. PEARCE
STATE TREASURER



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STATE OF VERMONT
OFFICE OF THE STATE TREASURER

TO: Senator Jeannette White, Chair, Senate Committee on Government Operations
Senator Richard Westman, Sponsor

FROM: Beth Pearce, Vermont State Treasurer

RE: Comments – S.143

DATE: March 27, 2019

I am writing to address S.143 as introduced. These comments are in my capacity as State Treasurer and as an individual member of the Vermont Municipal Employees Retirement System (VMERS) Board of Trustees. They do not represent the opinion of the full VMERS Board. I have, however, forwarded the bill to the VMERS Chair for review and possible inclusion on the next agenda.

S.143 raises a number of issues. Generally speaking, it appears to be redundant of existing authority, potentially restricting to sheriff's departments seeking to join VMERS, and most importantly, inconsistent with core principles of law and retirement system administration.

First, certain language in S.143 is redundant of existing authority. A county sheriff's department is already able to join VMERS, as four have already done. In 2001, the Attorney General's Office determined that a county sheriff's department met the statutory criteria to join VMERS. A copy of that opinion is attached here. In 2005, the Essex County Sheriff's Department made the decision to join VMERS. This was within a few months of the July 2005 decision by Lamoille County to join VSERS. (See attached documents memorializing these decisions.) Accordingly, language authorizing county sheriff's departments to join VMERS is not necessary.

Second, language in S.143 can be read to potentially restrict the choice that county sheriff's departments currently have when joining VMERS. The bill states that patrol deputies with primary law enforcement responsibilities are eligible for Group D. This is certainly consistent with the eligibility requirements for Group D now. However, under current law, these deputies would also be eligible for inclusion in Groups A, B and C, and it is up to the sheriff's department to choose which group to offer its employees. Language specifying that these patrol deputies are eligible for Group D could therefore be read to imply that they are no longer eligible for other groups.

The same concern would exist for other sheriff's department employees, as S.143 specifies that employees with nonprimary law enforcement roles are eligible for Group B only. Under current law, these employees would be eligible for Groups A and C as well.

The attached chart shows the different groups that sheriff's departments may choose from when joining VMERS. The four sheriff's departments already in VMERS were able to choose the group that was right for them and their employees. The issue of choice and flexibility is important inasmuch as sheriff's departments are responsible for paying the employer share. This is a key feature of the VMERS plan. It is not a one-size-fits-all plan, and it allows for local decision making based on the needs and resources of the local entity involved. The language in S.143 could be read to limit this flexibility.

Third, and perhaps most important, when a public employer elects to join a retirement plan—either VMERS or the Vermont State Employees Retirement System (VSERS)—that decision is and should be irrevocable.

The Legislature has required that that decisions to join a particular plan are irrevocable. With respect to the VSERS statutes, 3 V.S.A. § 490 states that “[t]he agreement of any employer to contribute on account of its employees shall be irrevocable....” The VMERS statutes have a similar provision, with 24 V.S.A. § 5053(c) providing that “[t]he vote by the legislative body of a municipality to join the Vermont Municipal Employees' Retirement System shall be irrevocable.”

The Legislature made these decisions irrevocable for good reason. Retirement plans are meant to be stable, predictable, and reliable over the long term, both for the employer and employees. Further, making such decisions irrevocable is a matter of fairness, as it prevents adverse selection, which can raise costs and disadvantage members or their beneficiaries. The importance of stability has long been recognized by State Treasurers, retirement professionals, and actuaries.

In order to maintain low volatility of recommended funding levels over the life of a defined benefit plan, it is critical to be able to predict with some degree of stability the demographics of the members covered by the plans. If members were given the opportunity to elect between plans, the actuary would be unable to predict with any degree of accuracy what future liabilities might be.¹

Allowing sheriff's departments to revisit their decision to join a particular retirement system would create significant logistical and financial issues. Logistical issues arise with respect to how existing employees are treated. Are they required to change plans or given the option. And on what terms do they transition. Depending on the answer to these and other questions, legal issues may arise as well.

¹ *Memorandum from James H. Douglas, State Treasurer to the General Assembly regarding Inclusion of State Firefighters in Group C of the Vermont State Retirement System* (Jan. 15, 2001).

With respect to plan finances, different amounts are contributed by employees and employers based on the plan selected. When changing plans, questions arise as to how the contributions in one plan translate to service credit in another. Moreover, the VSERS system currently has a significant unfunded liability. Even if such a transfer was contemplated against this recommendation, the employer should be expected to reimburse VSERS for its share of that liability.

In light of the above, the Treasurer's Office cannot support the language in S.143 that would permit a sheriff's department in VSERS to transfer to VMERS. Thank you for your consideration of these comments. Please give me a call if you have any questions.

MEMORANDUM

OFFICE OF ATTORNEY GENERAL

TO: Cynthia Webster, Director Retirement Division
FROM: ^{m. m.} Mike McShane, Assistant Attorney General
DATE: July 9, 2001
RE: Retirement for Deputy Sheriffs

RECEIVED
JUL 10 2001

TREASURER'S OFFICE
RETIREMENT DIVISION

You have asked if Deputy Sheriffs may participate in the Municipal Employees Retirement System.

It is my understanding that the Deputy Sheriffs in question are full time employees of the County Sheriff's Office. These deputies are paid by the Sheriff's Office and are not paid through state payroll and are not paid by the County.

In my opinion the answer to your question is in the affirmative.

The statute provides that:

" [A] municipality may elect to join the Vermont municipal employees' retirement system by a vote of the legislative body of such municipality for all of its employees or for employees of one or more groups of employees which have a similarity of interest, needs and general conditions of employment, as determined by the legislative body and approved by the board." 24 V.S.A. § 5053(c)

"Municipality" is defined as follows:

"Municipality means a city, town, county, incorporated village, fire districts, consolidated water districts, housing authorities, union municipal districts, school districts, incorporated school districts, union school districts or any of their instrumentalities. The retirement board shall determine any question as to whether an employer is eligible to participate in the system." 24 V.S.A. §5051(14).

Sheriffs' offices are not included in the above definition. However, it can reasonably be said that sheriff's offices are "instrumentalities" of counties.

The statute provides no definition of "instrumentality". Therefore, the ordinary meaning of that word will be implied. Comm to Save the Bishop's House v. Medical Center Hospital of Vermont, 137 Vt. 142 (1979).

The definition of "Instrumentality" includes the following:

[A] subsidiary branch especially of a governing body: something by which an end is achieved.

Webster's Third New International Dictionary

The Vermont Statutes include sheriffs among those officials designated as "county officers". 24 V.S.A. Chapter 5. More specifically, the statutes state that a "sheriff's department is established in each county." 24 V.S.A. § 290(a). The sheriff's office is an instrumentality of the county for the purpose of preservation of the peace. See 24 V.S.A. § 299. Therefore, while the office of sheriff may have other attributes, it may reasonably be said that the office of sheriff is an instrumentality of the county.

As stated, 24 V.S.A. § 5053(14) empowers the retirement board to determine any question as to the whether an employee is eligible to participate in the system. In my opinion, it would be within the bounds of the board's discretion to determine that the deputy sheriffs in question are eligible to participate in the Vermont Municipal Employees Retirement System.

I hope that this is responsive to your concerns.

cc: Bill Griffin

JAMES H. DOUGLAS
STATE TREASURER

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Memorandum

TO: Bill Griffin, Chief Assistant Attorney General

FROM: Cynthia L. Webster, Director of Retirement Operations

DATE: April 30, 2001

SUBJ: Employees of the County Sheriff's Office

Several years ago, our office posed the question of whether employees of a Sheriff's Office, other than the sheriff and full-time deputies paid through the State payroll, were considered *municipal* employees, and therefore eligible for the Vermont Municipal Employees' Retirement System (VMERS). I do not remember whether the question was ever fully resolved, but my recollection is that it was not.

I recently received a call from Sheriff Norris in Franklin County. Sheriff Norris would like to enroll his employees in the appropriate retirement plan offered by the State of Vermont. He has 2 employees who are paid by the County, and I am confident they could join the VMERS pursuant to 24 V.S.A. § 5051(14). The remaining employees of the Franklin County Sheriff's Office are full-time deputies paid by the Sheriff's Office, rather than through the State payroll.

I would appreciate your opinion on whether a County Sheriff's Office can be considered an instrumentality of a municipality and therefore qualify for inclusion under the VMERS pursuant to 24 V.S.A. § 5051(14).

I look forward to your response to this complex issue.

cc: Robert Norris



STATE OF VERMONT
ESSEX COUNTY SHERIFF'S DEPARTMENT

Minutes of Meeting to join VMERS

RECEIVED
APR 25 2005
TREASURER'S OFFICE
RETIREMENT DIVISION

On April 19, 2005 the eligible members of the Essex County Sheriff's Department voted unanimously to join the Group B Plan after reviewing the Vermont Municipal Employees' Retirement System packet forwarded to the Essex County Sheriff. Effective date of July 1, 2005.

Members voting to accept the plan are:

Jeffery M. Noyes
Valerie M. Foy
Ryan M. Kennett
Laurna M. Noyes
Mary Jane Colby

This vote is approved and agreeable with Sheriff Amos Colby.

Amos C. Colby
4-21-05

Roger Marcoux, Jr.
Sheriff



OFFAL - 911

Administration: (802) 888-3502
Civil Process: (802) 888-2561
FAX: (802) 888-2562

STATE OF VERMONT
LAMOILLE COUNTY SHERIFF'S DEPARTMENT
Post Office Box 96
Hyde Park, Vermont 05655

June 13, 2005

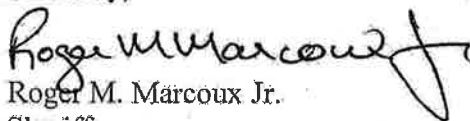
Cynthia Webster
Director of Vermont State Retirement System
133 State Street
Montpelier, VT 05633-6901

Dear Cynthia:

Pursuant to our telephone conversation I am advising you that the Lamoille County Sheriff's Department has elected to join the Vermont State Retirement System, Group F effective July 1, 2005. I look forward to our meeting on June 23, 2005. I will know the exact number of employees joining group F after that meeting.

Please call me with any questions.

Sincerely,


Roger M. Marcoux Jr.
Sheriff

RECEIVED

JUN 15 2005

TREASURER'S OFFICE
RETIREMENT DIVISION

VMERS GROUP COMPARISONS	GROUP A	GROUP B	GROUP C	GROUP D
Employee Contributions	2.625% of gross salary	5.000% of gross salary	10.125% of gross salary	11.475% of gross salary
Employer Contributions	4.125% of gross salary	5.625% of gross salary	7.375% of gross salary	9.975% of gross salary
Average Final Compensation (AFC)	Highest 5 consecutive years	Highest 3 consecutive years	Highest 3 consecutive years	Highest 2 consecutive years
Benefit Formula	1.4% x creditable service x AFC	1.7% x creditable service x AFC + previous service: 1.4% x Group A x AFC	2.5% x creditable service x AFC + previous service: 1.4% x Group A x AFC 1.7% x Group B x AFC	2.5% x creditable service x AFC + previous service: 1.4% x Group A x AFC 1.7% x Group B x AFC 2.5% x Group C x AFC
Maximum Benefit Payable	60% of AFC	60% of AFC	50% of AFC	50% of AFC
Normal Retirement (no reduction)	Age 65 with 5 years of service or 55 with 35 years of service	Age 62 with 5 years of service or 55 with 30 years of service	Age 55 with 5 years of service	Age 55 with 5 years of service
Post-Retirement COLA	50% of CPI, up to 2% per year	50% of CPI, up to 3% per year	50% of CPI, up to 3% per year	50% of CPI, up to 3% per year
Early Retirement Eligibility	Age 55 with 5 years of service	Age 55 with 5 years of service	N/A	Age 50 with 20 years of service
Early Retirement Reduction	6% per year from age 65*	6% per year from age 62*	N/A	No Reduction
Post-Retirement Survivorship Options	100% and 50% (with or without pop-ups), all actuarially reduced based on age of beneficiary	100% and 50% (with or without pop-ups), all actuarially reduced based on age of beneficiary	100% and 50% (with or without pop-ups), all actuarially reduced based on age of beneficiary	70% spousal survivorship with no reduction in retiree's benefit
Benefit Eligibility - Other (Vested Rights, Disability, Death-in-Service)	5 years of service	5 years of service	5 years of service	5 years of service
Disability Benefit	Unreduced, accrued benefit	Unreduced accrued benefit	Unreduced, accrued benefit	Unreduced, accrued benefit, plus children's benefit representing 10% of AFC to maximum of 3 concurrently

Death-in-Service Benefit	Disability benefit or early retirement benefit, whichever is greater, with 100% survivorship factor applied	Disability benefit or early retirement benefit, whichever is greater, with 100% survivorship factor applied	Disability benefit or early retirement benefit, whichever is greater, with 100% survivorship factor applied	70% of accrued benefit with no actuarial reduction applied
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* A special early retirement factor of 3% per year only for municipal police officers who have attained age 60.

Sheriff Departments Membership in VMERS & VSERS

Sheriff Departments in VMERS (Municipal)			
Department	Group	Number of Employees	Date Joined
Chittenden County Sheriff's Department	C	7	7/1/2017
Essex County Sheriff's Department	B	3	7/1/2005
Grand Isle County Sheriffs	B	4	7/1/2016
Orleans County Sheriff's Department	B	2	7/1/2018
	C	6	7/1/2018

Sheriff Departments in VSERS (State)			
Department	Group	Number of Employees	Date Joined
Bennington County Sheriff's Department	F	10	at least 2004
Franklin County Sheriff's Department	F	11	at least 2004
Lamoille County Sheriff's Department	F	18	7/1/2005
Orange County Sheriff's Department	F	9	at least 2005
Rutland County Sheriff's Department	F	15	4/1/2003
Windham County Sheriff's Department	F	14	7/1/1999
Windsor County Sheriff's Department	F	12	at least 2009