STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL

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Opinion No. 15-18

Public Employer's Amendment of Retirement Plan Affecting Vested Members

Question

Presuming that a public employer has adequately reserved the right to amend the retirement benefit plan that it maintains for its non-certificated employees, and the amendment does not impair vested rights or otherwise reduce vested benefits that have accrued at the time of the amendment, may the public employer amend the retirement plan to reduce future benefit accruals and other unaccrued rights of vested members?

Opinion

Yes, assuming that the public employer has adequately reserved the right to amend its retirement benefit plan, the public employer may amend the plan to reduce future benefit accruals of vested members. In order to adequately reserve the right to amend future benefit accruals of vested members, however, the provisions of the retirement plan must be sufficient to apprise members that their future benefit accruals are subject to modification.

ANALYSIS

A public employee's rights in a pension and retirement plan are a matter of contract. They "are subject to the terms and conditions of the pension plan," and any contractual rights of the employee are "those conferred by the plan." *Blackwell v. Quarterly County Ct.*, 622 S.W.2d 535, 540 (Tenn. 1981). Nevertheless, in the absence of specific contractual language to the contrary, the Supreme Court has limited a public employer's ability to modify or amend plan provisions as to vested employees. In *Blackwell v. Quarterly County Court*, 622 S.W.2d 535, 543 (Tenn. 1981), the Court held that a public employer could make "reasonable modifications when necessary to protect or enhance actuarial soundness of the plan." In doing so, however, the employer could not make modifications that adversely affected employees whose rights under the plan had vested.[1] *Id.* The Court's holding in *Blackwell* protects not only benefits that have accrued as of the date of the plan's modification, but also the vested employee's right to continue accruing benefits in accordance with the terms of the plan as they stood before modification. *Id.* at 543.

[1] Under Tennessee law, vested employees are those who have "complied with all conditions necessary to be eligible for a retirement allowance." *Blackwell*, 622 S.W.2d at 543. To be vested, an employee must have met all eligibility requirements to receive a retirement benefit in the future, but the employee need not have attained the minimum retirement age or the right to receive present benefits. *Id.* at 544. For vesting purposes, it is sufficient that the employee has acquired the right to receive retirement benefits at some future date. *Id.*

You have asked whether a public employer may amend a retirement plan to reduce future benefit accruals of vested members when the public employer "has adequately reserved the right to amend the retirement benefit plan." In the absence of specific language effectively and sufficiently reserving such a right to amend, the rule announced in *Blackwell* would apply and the public employer would be prohibited from reducing future benefit accruals of vested members, inasmuch as such a modification would "adversely affect employees whose rights under the plan have vested." *Blackwell,* 622 S.W.2d at 543.

The question then is whether the employer has effectively reserved that right to amend a given retirement plan to reduce future benefit accruals for vested members. At the outset, it should be noted that a mere reservation of a general right to amend the retirement plan, without more explanation, may be ineffective to authorize a public employer to amend the plan in a way that adversely affects the future rights of vested employees. In *Blackwell,* for example, the Court observed that the code provisions authorizing the county's retirement plan contemplated that "reasonable modifications may be made in public pension plans in order to keep them actuarially sound." *Blackwell,* 622 S.W.2d at 542 (citing Tenn. Code Ann. § 3-9-102). Despite the fact that the applicable code provisions contemplated reasonable modifications to the plan, the Court limited the county's ability to modify the plan as to vested employees. In *Roberts v. Tennessee Consolidated Retirement System,* 622 S.W.2d 544 (Tenn. 1981), the Court similarly limited the state's ability to modify its retirement plan even though the provisions governing the state retirement system authorized the legislature to amend or repeal any terms governing the plan, so long as such an amendment did not diminish any member rights acquired under the plan. Although a right to amend existed in both the *Blackwell* and *Roberts* cases, neither right was sufficient to authorize plan amendments that adversely affected vested members' rights. *See* Tenn. Code Ann. § 8-34-204. *See also McGrath v. Rhode Island Ret. Bd.,* 88 F.3d 12, 18 (1st Cir. 1996) (observing developing common-law precedent "in support of the view that an express and unqualified reservation of the power to amend or terminate a pension plan is only to be given effect up to the point at which an employee's rights under the plan vest").

To date, the Tennessee Supreme Court has not addressed whether a public employer contractually could reserve the right to amend a retirement plan so as to authorize the employer to alter vested members' prospective rights in the plan. Nevertheless, the Court has recognized that an employee's rights in a public pension and retirement plan "are subject to the terms and conditions of the pension plan, . . . and no contractual rights, other than those conferred by the plan, exist simply by reason of employment." *Blackwell,* 622 S.W.2d at 540. Thus, in determining an employee's right to retirement benefits, the Court looks first to the terms and conditions of the retirement plan and, to the extent possible, gives effect to those provisions.

In light of the recognized contractual basis for employee retirement benefit rights, a public employer may amend its retirement plan to reduce future benefit accruals, even as to vested members, if the plan specifically, expressly, and plainly reserves such a right to amend. In order to constitute an adequate reservation of the right to amend, however, the provisions of the public retirement plan must be sufficiently specific and clear to notify members not only that the public employer may amend the plan from time to time, but that the employer may alter vested members' rights under the plan, including the right to accrue future benefits. *See Transport Workers Union, Local 290 v. Southwestern Pa. Transp. Auth.,* 145 F.3d 619, 622 (3rd Cir. 1998) (holding that, in

determining validity of plan amendment as to vested employees, court must inquire whether the employees' "legitimate expectations" under the terms of the retirement plan "have been substantially thwarted" by the amendment). For example, in recent legislation creating a hybrid retirement plan for state employees and teachers hired on or after July 1, 2014, the General Assembly specifically reserved "the right to freeze, suspend, or modify benefits, employee and employer contributions, plan terms, and design of the hybrid plan on a prospective basis." Tenn. Code Ann. § 8-36-921. It further provided that "[n]othing under state law may confer to participants in the hybrid plan an implied right to future retirement benefit arrangements and such participants may not assert the indefinite continuation of the retirement formulas, contribution rates, eligibility ages, or any other provision of the plan." *Id.* Rather than merely enacting a general right to reserve the plan, the General Assembly has enacted provisions that seek to notify plan participants of the specific terms of the plan that are subject to modification on a prospective basis.

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