



Legal Opinion L-2005-08
April 19, 2005

U.S. Railroad Retirement Board Phone: (312) 751-7139
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TO: Marie Leeson
Chief of Calculation Analysis and Systems
Through: Ron Russo
Director of Policy and Systems, Office of Programs

FROM: Steven A. Bartholow
General Counsel

SUBJECT: Spouse Annuity Public Service Pension Reduction

This is in reply to your request of March 25, 2005, for an opinion as to whether the spouse annuity payable to the individual in question should be reduced for entitlement to a school district pension which is based on less than 60 months of total service. For the reasons explained below, in my opinion the spouse annuity is not subject to reduction due to her public service pension.

According to the information you furnished, the spouse began working for the school district as a temporary employee in September 2001. After one year, she became a permanent employee. Her work for the school district as a temporary employee was covered employment under the Social Security Act, while her employment as a permanent employee beginning September 2002 has been covered by both the Social Security Act and a public pension system for permanent employees. The spouse had no other employment since 1999. As she was born in April 1945, and as the railroad employee is age 60 with 30 years of creditable railroad service, the spouse intends to leave her employment with the school district in May 2005, and file an application for an annuity under the Railroad Retirement Act to begin in May 2005.

As you know, section 2(c) of the Railroad Retirement Act provides annuities for the spouses of railroad employees who are entitled to employee annuities under section 2(a)(1) of the Act. The amount of spouse annuities is defined as "the amount provided under section 4 of this Act." Section 4(a)(1) in turn provides that:

(a)(1) The annuity of a spouse or divorced wife of an individual [employee] under section 2(c) of this Act shall be in an amount equal to the amount (before any reduction on account of age and before any deductions on account of work) of the wife's insurance benefit or the husband's insurance benefit to which such spouse or divorced wife would have been entitled under the Social Security Act if such individual's service as an employee * * * had been included in the term "employment" as defined in that Act.

Entitlement to spouse benefits under the Social Security Act is established by sections 202(b)(wives and divorced wives), and 202(c)(husbands and divorced husbands) of that Act. Section 202(k)(5) of the Social Security Act, as amended by section 418 of Public Law 108-203 (118 Stat. 493, 531) requires a spouse social security benefit under section 202(b) and 202(c) to be offset by two-thirds of a public pension:

* * * which is based upon such individual's earnings while in the service of the Federal Government or any State (or political subdivision thereof * * *) if, during any portion of the last 60 months of such service ending with the last day such individual was employed by such entity—
(i) such service did not constitute 'employment' as defined * * * [as covered social security employment]. (emphasis added).

In Legal Opinion L-2004-05, I reviewed the changes made to prior law by P.L. 108-203, and concluded that new section 202(k)(5)(A) required that the tier I component of spouse annuities must be reduced by any "public pension" which the spouse annuitant may receive, if a spouse social security benefit would be



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reduced under the same circumstances. See also, regulations of the Board at 20 CFR 226.31, setting forth the calculation of the reduction of a spouse tier I component for a public service pension prior to the 2004 amendment.

As stated in L-2004-05, the reduction applies where any portion of the spouse's last 60 months of public service used to calculate the public pension was not covered social security employment.¹ In the case you presented, it is true that the spouse will be entitled to a pension "which is based upon such individual's earnings while in the service of * * * [a] political subdivision * * * "of a State. However, you have stated that her entire period of employment for the school district, as both a temporary and a permanent employee, was covered social security employment. Because all service within her last 60 months of public service used to calculate the public pension did also constitute "employment" covered by the Social Security Act, the spouse does not fall within the group of spouses subject to the reduction as defined by 202(k)(5)(A)(i) above. The fact that her total employment is less than 60 months does not affect the outcome.

Accordingly, the tier I annuity component of her spouse annuity is not subject to any reduction for any public pension based on that employment.

¹ The general rule is subject to certain "phase-in" provisions not relevant to this discussion.