

June 11, 2015

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Re: New Jersey Supreme Court Case on Pension Funding (“Chapter78”)

Dear Mayor:

On Tuesday, we notified you that the New Jersey Supreme Court ruled that statutory language in PL 2011, C. 78 (“Chapter 78”) did not create an enforceable contract requiring constitutional protection. This decision is the result of multiple actions filed by individuals and unions on behalf of New Jersey State employees, after the fiscal year 2015 budget included contributions that were \$1.57 billion less than what Chapter 78 required. At the trial level, the law division accepted the argument that Chapter 78 created a contractual right and that the lack of funding was a violation of contract. It similarly rejected arguments that Chapter 78 mandated State pension contributions were **NOT** enforceable as a contractual right, despite the Debt Limitation Clause, Appropriations Clause and the governor’s line-item veto power.

The plain language of Chapter 78 was evidence of the contract right to the State’s pension contributions, it specifically set forth the legal entitlement to particular rates as well as a clear statement that any failure to make those contributions results in a contractual impairment. Although the Court recognized the legislature’s good intentions in passing Chapter 78, the Court simultaneously rejected the Legislature’s authority to do so.

First, the Debt Limitation clause of the New Jersey Constitution prohibited such action. The intention of Chapter 78 could not set aside the broad, clear language contained in the Debt Limitation Clause. In sum, this provision limits the amount of debt or liability the Legislature may incur on a year to year basis without a vote of the State’s public.

Furthermore, the Court reasoned that the State pension contribution mandates of Chapter 78 failed to meet the requirements of the New Jersey Constitution’s Appropriations Clause. Indeed “where legislation sought to bind future Legislatures in a manner that implicated both the Debt Limitation and Appropriations Clause...the legislation survived those Clauses because the Legislature retained its constitutionally enshrined powers to annually appropriate funds as necessary for the fiscal health of the State.” This reservation of rights was wholly absent from Chapter 78.

Ultimately, the failure of Chapter 78 to meet the requirements of the Debt Limitation and Appropriations Clauses resulted in “no legally enforceable financial obligation imposed on the State.” In reaching its decision the Court recognized the impact it would have on the public trust given the resultant broken promises of Chapter 78. It similarly recognized that the pension system, as currently funded, is of significant concern, but that did not permit the Court to ignore its obligation to enforce the State’s constitution. Instead of acting for the other branches of government, the Court notes “it is the people’s responsibility to hold the elective branches of government responsible for their judgment and for their exercise of constitutional powers.”

As we previously stated, any efforts to address the underfunding of the State’s pension obligations need to recognize and respect the integrity of all locally funded retirement and

benefit plans. Remedial efforts must not include the mingling of the State and local PERS and local PFRS, or the transfer the state's obligations to local government.

We will continue to keep you apprised of new developments.

Very truly yours,

William G. Dressel, Jr.
Executive Director