



State of Rhode Island and Providence Plantations

Department of Administration
BUREAU OF AUDITS
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July 3, 2014

Mr. Theodore Scripsack
Chairperson, Board of Fire Fighter's Relief
Rhode Island Department of Labor and Training
1511 Pontiac Avenue
Cranston, RI 02920

Mr. Mark Boisclair
Chairperson, Board of Police Officers' Relief
Rhode Island Department of Labor and Training
1511 Pontiac Avenue
Cranston, RI 02920

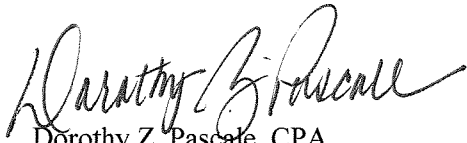
Dear Chairpersons Scirpsack and Boisclair:

The Bureau of Audits completed an audit of the benefits administered by the Department of Labor and Training concerning the Board of Police Officers' Relief and the Board of Fire Fighters' Relief. Our audit scope was limited to activity recorded during the time period beginning July 1, 2012 and ending June 30, 2013. The audit was conducted in accordance with Rhode Island General Laws (RIGL) §35-7-3 for the purpose to determine the effectiveness of the controls in place surrounding the benefits.

The findings and recommendations included herein have been discussed with members of the Department of Labor and Training management, and the Board Chairpersons; we considered their comments in the preparation of this report. RIGL§35-7-3(b), entitled *Audits performed by bureau of audits*, states that "Within twenty (20) days following the date of issuance of the final audit report, the head of the department, agency or private entity audited shall respond in writing to each recommendation made in the final audit report." Accordingly, the boards submitted their responses to the audit recommendations on June 19, 2014 and such responses are included in this report. Pursuant to this statute, within one year following the date of issuance, the Bureau may follow up regarding the implementation status of the recommendations which are included in this report.

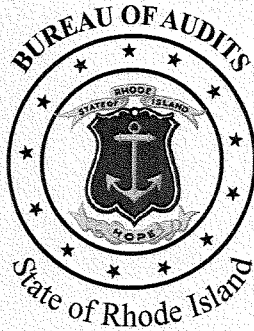
We would like to express our sincere appreciation to the Chairpersons and the Department of Labor and Training staff for the cooperation and courtesy extended to the members of our team during the course of this audit.

Respectfully yours,

A handwritten signature in cursive script, appearing to read "Dorothy Z. Pascale".

Dorothy Z. Pascale, CPA
Chief, Bureau of Audits

- c- Charles Fogarty, Director, Department of Labor and Training
- Sean Fontes Esq., Executive Legal Counsel, Department of Labor and Training
- Peter Kilmartin Esq., Attorney General
- Richard Licht, Director, Department of Administration
- Kenneth Kirsch, Deputy Director, Department of Administration
- Honorable Daniel DaPonte, Chairperson, Senate Committee on Finance
- Honorable Raymond Gallison, Jr., Chairperson, House Finance Committee
- Dennis Hoyle, CPA, Auditor General
- Peter Marino, Director, Office of Management and Budget



AUDIT Executive Summary

Why the Bureau Did This Review

The Bureau conducted an audit of the annuity and tuition benefits administered by the Department of Labor and Training's Board of Police Officer's Relief and Board of Fire Fighter's Relief. This audit was initiated based on the concerns raised and control weaknesses discussed in the Governor requested audit of tuition waivers at the State's colleges and university.

Background Information

DLT and the Boards of Relief for policemen and firefighters are responsible for the administration of several benefits designed to provide support to disabled policemen, disabled firefighters, and their families as well as the families of deceased policemen and firefighters killed in the line of duty or died as the result of injuries sustained in the line of duty. The benefits include:

- Annuities to families of the deceased
- Paid tuition at state colleges or university for the disabled policeman or firefighter
- Paid tuition at state colleges or university for the children of deceased or disabled policemen or firefighters

The Bureau Recommends:

Consistent interpretation and application of the law

- Both the police officer and fire fighter relief boards should use the same criteria when determining eligibility and time limitations for tuition benefits

Strengthen Controls

- Verify employment status
- Improve segregation of duties
- Compile a list of eligible firefighters

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Objective, Scope and Methodology

This audit was initiated by the Bureau of Audits based on the concerns raised, and control weaknesses discussed in the *Rhode Island Board of Education (successor to the Rhode Island Board of Governors for Higher Education) Tuition Waiver Audit Report*. The audit of annuity and tuition benefits administered by the Department of Labor and Training's Board of Relief for Police Officer's and Board of Relief for Fire Fighter's was performed to conclude if the methodology and procedures to determine benefit eligibility has proper controls in place to safeguard the asset and comply with state laws, rules, and regulations.

Our audit focused on activity recorded from July 1, 2012 through June 30, 2013. A more detailed explanation of the benefits administered by these Boards of Relief is included with this report; refer to Appendix A.

In order to accomplish the objectives stated above, the audit team:

- Collected data and information from the DLT Financial Management Officer regarding funds for Police and Firefighter Relief.
- Interviewed the DLT Financial Management Officer assigned to administer the funds
- Met with the Chairpersons for both relief boards
- Developed and tested a sampling for each category: police surviving spouse pension, firefighter surviving spouse pension, police tuition reimbursement and firefighter tuition reimbursement.
- Reviewed applications to determine whether the documentation was complete and in accordance with applicable laws, rules and regulations.
- Requested a legal opinion to determine if each Board of Relief may define and apply the phrase "totally and permanently disabled" differently.

Background

Rhode Island General Laws (RIGL) Chapter 45-19 *Relief of Injured and Deceased Fire Fighters and Police Officers* provide various benefits for policemen and firefighters who are injured or killed in the line of duty or as a result of their employment. The law establishes two separate Boards and charges these Boards with administration of these benefits. RIGL§ 45-19-2 establishes the *Board of police officer's relief* and RIGL§ 45-19-5 establishes the *Board of fire fighter's relief*.

Each relief board has established different rules and regulations to administer their respective programs. Both boards are responsible for administering State funds that provide benefits to qualifying public safety officers and/or family members when the police officer or firefighter is either deceased or "totally and permanently disabled" as a result of their service. There is a

surviving spouse annuity and a tuition payment benefit for the disabled officer or firefighter and their children.¹

The chart below summarizes the surviving spouse annuity benefit activity for fiscal year 2013.

<i>Relief Fund Pension Fiscal Year 2013</i>		
	Total Paid	Recipients as of 06/30/2013
Firefighter Relief Fund Pension Payments	\$2,469,950	680
Police Relief Fund Pension Payments	\$1,030,814	249
Totals	\$3,500,764	929

The chart below summarizes the officer and dependent tuition payment activity for fiscal year 2013.

<i>Tuition Payments during Fiscal Year 2013</i>		
	Total Paid	Recipients as of 06/30/2013
Firefighter Relief Fund Pension Payments	\$463,151	60
Police Relief Fund Pension Payments	\$228,458	32
Totals	\$691,609	92

¹ The tuition reimbursement benefit is for eligible policemen, firefighters and their children that attend a State governed school of higher learning.

Findings, Recommendations and Board Responses

Both Boards of Relief Should Apply the Law Consistently

Eligibility

Sections 45-19-4.1 and 45-19-12.1 of Rhode Island General Law establish tuition benefits for the children of deceased or disabled policemen and firefighters, respectively. Both sections of the law allow for full payment of tuition at the state run colleges and universities for the children of disabled policemen and firefighters who:

...becomes totally and permanently disabled from injuries received while in the performance of his or her duty as a member...

Section 45-19-4.1(b) for policemen continues:

...the words 'totally and permanently disabled' mean any impairment of mind or body making it impossible for one to follow continuously a gainful occupation.

It is important to note that a similar definition of totally and permanently disabled does not appear in section 45-19-12.1 for firefighters.

The Attorney General's Opinion #88-03-15, issued March 2, 1988, defines "totally and permanently" disabled to be:

A policeman who receives a "permanent disability" from law enforcement work, but is able to work or operate a business is not necessarily "totally and permanently" disabled under the statute. The Act refers to being totally and permanently disabled. Therefore, although one may be permanently disabled, if the police officer is not also totally disabled he or she is not within the scope of the act [sic].

Based on the above opinion, the rules of the Board of police officer's relief require all disabled policemen to sign an affidavit stating that they are not participating in a continuously gainful occupation so as not to be precluded from receiving tuition payment.

The Office of Attorney General issued two subsequent unofficial opinions which clarified police eligibility for tuition payment. The unofficial opinion issued November 3, 1994 opined regarding the benefit limitation of four years. The unofficial opinion issued December 2, 1994 opined, when determining eligibility for tuition payment benefits, the definition of "totally and permanently disabled" should be applied in the same fashion for both children of disabled police officers, and disabled police officers themselves.

These three official and unofficial opinions were not applied to the Board of Fire Fighter's Relief; therefore, the Board of Fire Fighter's Relief does not have a corresponding rule or procedure to disallow the tuition payment benefit should a disabled firefighter participate in a continuously gainful occupation.

This inconsistent application of law has resulted in different benefits for disabled policemen and firefighters. Disabled policemen are not eligible for tuition payment for their dependents if they perform work for pay in any capacity; while disabled firefighters are eligible for the benefit regardless of whether they perform work for pay.

In an effort to resolve the issue, on November 12, 2013 (at the request of the Bureau), DLT asked for an opinion from the Rhode Island Attorney General Office as to whether both boards should be using the same definition of "totally and permanently disabled" to determine eligibility for the tuition payment benefit. In a reply dated March 6, 2014, the Attorney General's Office states in pertinent part,

The notion that the Legislature intended to provide inequitable remedies between children of police officers and children of fire fighters is absurd. This would be an illogical interpretation of the legislature's intent. R.I.G.L. §§45-19-4.1 and 45-19-12.1 should be considered together. The definition of "totally and permanently disabled" is a part of an overall scheme and it should apply to the entire statute; the utilization of which will not provide for incongruities, but rather will be consistent with the intent of the statute.

In addition, the Attorney General's Office states:

... Clearly, it makes no sense to apply different rules to injured police officers and to injured firefighters, and the law, as it exists, does not support such a distinction given the rules of statutory construction.

However, the correspondence also states in pertinent part:

... Given the longstanding confusion over the disparate treatment of disabled firefighters and police officers under the existing statutory scheme, we do not endorse resolving this critical issue through application of statutory construction principles. The issue is simply too important to those injured in the line of duty, and to their families, to resolve in that manner.

As this confusion has its roots in the enabling language enacted by the General Assembly, resolution of this issue should be found through the legislative process, where all of those impacted by this issue may have their voices heard.

The Bureau recommends the following action based upon the section of the 2014 Attorney General's Office correspondence stating, R.I.G.L. §§45-19-4.1 and 45-19-12.1 should be

considered together. The definition of “totally and permanently disabled” is a part of an overall scheme and it should apply to the entire statute. Additionally, the 1988 Attorney General Opinion which defined “totally and permanently disabled,” and the two 1994 Attorney General Unofficial Opinions were also considered as part of our recommendation. Refer to Appendix B for copies of the Attorney General’s Office correspondence.

Recommendation:

1. Until a formal resolution is fully vetted through the legislative process, the Board of Fire Fighter's Relief should immediately establish rules and enforce a definition of “totally and permanently disabled” which complies with the Rhode Island General Laws as further clarified in the 1988 Attorney General Opinion # 88-03-15.

Board of Fire Fighter’s Relief Response: The Board voted to object to this recommendation pursuant to the Board’s interpretation of R.I. Gen. Laws § 45-19-12.1. The Board’s interpretation of the law is that the definition of “totally and permanently disabled” to which the Bureau of Audits refers does not apply to the Board of Fire Fighter’s Relief since this definition is not located under the section of the law that applies specifically to the Board of Fire Fighter’s Relief under R.I. Gen. Laws § 45-19-12.1. The definition to which the Bureau of Audits refers applies solely to the Board of Police Officers’ Relief under a separate section of the law R.I. Gen. Laws § 45-19-4.1. The Board believes that under its interpretation of the law a disabled fire fighter and his/her children’s tuition is to be paid as long as the fire fighter does not return to work as a fire fighter. This has been the Board’s interpretation of the law since the law’s creation in 1979. Therefore, for the Board to construe the law as recommended by the Bureau of Audits and to alter its current practices as recommended by the Bureau of Audits, until a formal resolution is vetted through the legislative process, would be a violation of the law.

Auditor Response: The Bureau upholds the position that the Board of Fire Fighter’s Relief continues to expend appropriated funds contradictory to Attorney General guidance. Additionally, implementation of Recommendation 1 would not violate the law as noted in the Attorney General opinions and correspondence.

The Board’s response that it has interpreted the applicable statute outside of the Attorney General opinion raises the scope of RIGL §42-35-2 Administrative Procedures, Public information – Adoption of rules – Availability of rules and orders which states in pertinent part:

...
*(3) Make available for public inspection all rules and all other written statements of policy or **interpretations formulated, adopted, or used by the agency in the discharge of its functions** [emphasis added] ...*

The lay-board interpretation noted in the board response is based upon institutional knowledge and prior business practices. It was derived without the benefit of legal counsel. The interpretation is not documented in the board rules and regulations. The failure to promulgate

the board interpretation and lack of legal insight has exposed the board and its members to possible legal exposure for breach of fiduciary duty and monetary responsibility for a wrongful expenditure of appropriated funds.

The Fire Fighter's Relief Board should follow directions provided in Recommendation 1 and the Department of Labor and Training, as administrator of the fund, should ensure compliance with RIGL§42-35-2(3); and, that the appropriated funds are expended in accordance with Recommendation 1.

Limitation of Tuition Benefit

RIGL § 45-19 allows for dependents of disabled or deceased police officers or firefighters to receive tuition benefits for attendance at the University of Rhode Island, Rhode Island College, or Community College of Rhode Island. The law specifies a four year period of time for which these benefits are allowable. The Board of Police Officer's Relief received unofficial opinion #U94-29 from the Attorney General on November 3, 1994 addressing the four year period and amended the rules accordingly.

The Board of Fire Fighter's Relief rules and regulations do not further define this four year period. We found four firefighter dependents who had received tuition reimbursements in excess of a four year period, or 48 months. Three of these four students began classes during the 2008 fall semester and attended college continuously through the 2013 spring semester; more than the allotted time period. The fourth student began attending the college during the Fall 2007 Semester, took time off until Spring 2009, and then resumed attending college continuously through Spring 2013; more than the allotted time period.

Based upon facts presented at *Recommendation 1*, the Bureau recommends the following.

Recommendations:

2. In cooperation with the Board of Fire Fighter's Relief, establish rules to clarify the term "four year period" which comply with the opinions and guidance noted above.
3. Develop and implement a control to track the number of years/months that the students attended college classes and received tuition payment. Deny tuition payment for those students who exceed the four year period.

Board of Fire Fighter's Relief Response:

2. Agrees. During the audit process and prior to its conclusion, the Board's coordinator took corrective action with respect to the following recommendation of the Bureau of Audits.
3. Agrees. While the audit process was still taking place, the Board's coordinator took corrective action immediately. An Excel spreadsheet was created that lists the students name, the education start date, the college attended, the end date for benefits, and how much was/is paid

per semester per student. Also included in this spreadsheet is the Disabled/Deceased Officer's name, city in which they worked, city in which they currently reside, status of disabled or deceased, and recipient of the tuition benefit (dependant or officer). This corrective action was taken and communicated to the auditors before the completion their audit.

Board of Police Officer's Relief Response:

2. Agrees. During the audit process and prior to its conclusion, the Board's coordinator took corrective action with respect to the following recommendation of the Bureau of Audits.

3. Agrees. While the audit process was still taking place, the Board's coordinator took corrective action immediately. An Excel spreadsheet was created that lists the students name, the education start date, the college attended, the end date for benefits, and how much was/is paid per semester per student. Also included in this spreadsheet is the Disabled/Deceased Officer's name, city in which they worked, city in which they currently reside, status of disabled or deceased, and recipient of the tuition benefit (dependant or officer). This corrective action was taken and communicated to the auditors before the completion their audit.

Practices to Strengthen Internal Controls

Verify Assentation of Continuously Gainful Occupation

As noted earlier in this report, the Board of Police Officer's Relief further requires all disabled police officer tuition applicants to sign an affidavit stating that they are not employed in any way, and they must inform the Board if they become employed during the duration of the tuition benefit. Upon receipt of this signed affidavit the benefit is extended, providing other requirements are met, without any attempt to verify the assentation made in the affidavit.

A review of publicly available information indicated that it may indeed be the case that some of the disabled police officers were, in fact, participating in "continuously gainful employment" while receiving the tuition benefit.

Recommendation:

4. The Boards of Relief in coordination with DLT should establish a procedure to validate the non-employment assentation made in the affidavit. This verification should include requiring the applicant to provide consent to review third party documentation such as tax filings.

Board of Fire Fighter's Relief Response: The Board objects to this recommendation pursuant to its interpretation of R.I. Gen. Laws § 45-19-12.1. Under this law, the Board is not required to deny benefits if a fire fighter returns to work in a non-fire fighter capacity. Therefore, there is no need to validate non-employment.

Board of Police Officer's Relief Response: Agrees. The Board requires that request and verification of third party documentation be limited to documentation pertaining to the Police Officers, solely, since the Police Officers' employment status is the subject of the applicable statute R.I. Gen. Laws § 45-19-4.1. Therefore, any third party documentation pertaining to spouses and others, which includes income, employment status, or any other information generally considered confidential shall be restricted from access, such as spouses' information contained in joint tax returns. Furthermore, the Board requires that disclosure of such third party documentation should be limited to the Board members and the Board coordinator for the purpose of eligibility for benefits.

Auditor Response: The Bureau upholds the position that the Board of Fire Fighter's Relief continues to expend appropriated funds contradictory to Attorney General guidance. Refer to Auditor Response to Recommendation 1.

Improve Segregation of Duties

The administrative duties for the relief fund benefits of the policemen and firefighters have been assigned to a DLT financial management officer. This person performs the following tasks:

- Receives applications
- Presents applications and supporting material to Boards' for consideration
- Informs applicants of decision
- Creates a document that details the beneficiary and amount to be paid
- Reconciles amounts to paid to Board approved applications
- Performs adjustments to amounts paid to beneficiaries
- Removes beneficiaries from scheduled payments
- Handles all interaction with benefit recipients

The above noted tasks exemplify a control weakness since there are no checks and balances, or segregation of duties, from task to task. Permitting one person to receive, process, record, reconcile and adjust all information related to a benefit payment increases the risk of malfeasance and fraud. It should be noted that the Bureau did not find evidence of a fraud, related to benefit administration, during this audit.

Recommendation:

5. Assign some duties performed by the financial management officer to another individual. At a minimum, the duty of reconciling actual payments to Board approved payments should be assigned to someone other than the financial management officer.

Board of Fire Fighter's Relief Response: Reconciliations between actual payments and Board approved payments will be performed by the financial management administrator or their designee to ensure payments are proper.

Board of Police Officer's Relief Response: Reconciliations between actual payments and Board approved payments will be performed by the financial management administrator or their designee to ensure payments are proper.

Compile a List of Eligible Firefighters

R.I.G.L. § 45-19-11 requires:

... the secretary of all incorporated protective departments cooperating with fire departments, incorporated volunteer fire companies, and all fire fighters in a town having no organized fire department entitled to the benefits under this chapter, shall file, on the first Monday in July of each year with the secretary of the fire fighter's relief fund of Rhode Island, an alphabetical list of all its members.

A listing of firefighters who may be eligible for the benefits granted under this chapter would be beneficial when determining the eligibility of future applicants. This list does not currently exist; however, it is required to be filed on an annual basis. Additionally, DLT does not have a procedure in place for the collection and preservation for this information.

Recommendation:

6. Develop and implement a procedure for the request, acquisition and preservation of the lists of fire fighters as required by R.I.G.L. § 45-19-11.

Board of Fire Fighter's Relief Response: Agrees. The Board agrees to this recommendation, solely, with respect to the volunteer fire fighters pursuant to R.I.G.L. § 45-19-11.

Appendix A

Annuities to Dependents of Deceased Police Officers

To receive the benefits offered under Title 45, Chapter 19, Section 4 of the law, a police officer is defined as any active or retired member of the state police, police of any city or town employed at a fixed salary, or any executive high sheriff, deputy sheriff, member of the fugitive task force, capital police officer, permanent environmental police officer, criminal investigator of the department of environmental management, or airport police officer. These qualifying personnel can receive benefits if the police officer is killed or dies from injuries received while in the performance of duty, or dies of a heart condition or any condition derived from hypertension.

Tuition to the Children of Police Officers Dying or Disabled as a Result of Service

Under Title 45, Chapter 19, Section 4.1, if an active member of the police force dies or becomes permanently disabled from injuries received while in the performance of duty, dies of a heart condition or any condition derived from hypertension while still a member, the children of the police officer and/or the spouse of the police officer killed in the line of duty may receive tuition benefits. A disabled police officer must be unable to continuously hold a gainful occupation. Under this section of the law, a police officer is defined as any member of the state police, any correctional officer within the Department of Corrections, or the police of any city or town regularly employed at a fixed salary or wage. This excludes auxiliary and volunteer police officers of city, town, or state police, or any executive high sheriff, sheriff, deputy sheriff, member of the fugitive task force, capital police officer, permanent environmental police officer, criminal investigator of the Department of Environmental Management, or airport police officer.

Tuition to Police Officers disabled as a Result of Service

Under Title 45, Chapter 19, Section 4.2, if an active member of the police force becomes permanently disabled from injuries received while in the performance of duty, they may receive tuition benefits. A disabled police officer must be unable to continuously hold a gainful occupation. According to this section of the law, a police officer is any member of the state police, police of any city or town regularly employed at a fixed salary, any executive high sheriff, sheriff, deputy sheriff, member of the fugitive task force, capital police officer, permanent environmental police officer, criminal investigator of the Department of Environmental Management, or airport police officer. This excludes auxiliary and volunteer police officers of city, town, or state police.

Annuities to Dependents of Deceased Fire Fighters

Under Title 45, Chapter 19, Section 12, any active member of the fire force of a city, town, or state of Rhode Island is killed or dies from injuries received while in the performance of duty, or dies of a heart condition, respiratory ailments, or any condition derived from hypertension while still a member, the widow and dependents of the deceased are eligible for annuities.

Tuition of Children of Deceased or Disabled Fire Fighters

Under Title 45, Chapter 19, Section 12.1, if an active member of the fire force of a city or town, crash rescue crew persons, or airport firefighters of the State of Rhode Island is killed and becomes totally and permanently disabled from injuries received in the performance of duty, dies of a performance related heart condition, dies of performance related respiratory ailments, or dies of any condition derived from performance related hypertension, the children of the deceased are eligible to receive tuition benefits. For this section, a member of a fire force includes any member of a fire force or crash rescue crew persons of any city or town regularly employed at a fixed salary. It also includes auxiliary and volunteer fire fighters and crash rescue persons of any city, town, or state firefighting department. While the relating section for Police Officers defines “totally and permanently disabled” as not being able to continuously hold a gainful occupation, this section for firefighters does not stipulate that condition.

Tuition to Disabled Fire Fighters

Under Title 45, Chapter 19, Section 12.3, if an active member of the fire force of a city, town, crash rescue persons, or airport firefighters of the State of Rhode Island becomes totally and permanently disabled from injuries received while in the performance of duty, they may receive tuition benefits. For this section, a member of a fire force includes any member of a fire force or crash rescue crew persons of any city or town regularly employed at a fixed salary. It also includes auxiliary and volunteer fire fighters and crash crew persons and airport firefighters of any city, town, or state firefighting department. While the relating section for Police Officers defines “totally and permanently disabled” as not being able to continuously hold a gainful occupation, this section for firefighters does not stipulate that condition.

Appendix B

Attorney General Official and Unofficial Opinions



State of Rhode Island and Providence Plantations

DEPARTMENT OF THE ATTORNEY GENERAL

72 Pine Street, Providence, RI 02903

(401) 274-4400

James E. O'Neil, Attorney General

March 2, 1988

Arthur J. Newton, Secretary
Board of Relief for Policemen
Department of Labor
220 Elmwood Avenue
Providence, Rhode Island 02907

RE: R.I.G.L. § 45-19-4.1
Tuition to Children of Police Officers
Dying or Disabled as the Result of Service

A.G. OP. NO.
88-03-15

Dear Mr. Newton:

In response to your request for clarification of the meaning of R.I.G.L. § 45-19-4.1 as amended by Public Laws of 1987 Chapter 277, Section 1, please be advised of the following opinion:

"If an active member of the police force of a city or town is killed, dies or becomes totally and permanently disabled from injuries received while in the performance of his or her duty as such member, or dies of a heart condition or any condition derived from hypertension, while still a member, there shall be paid out of the general fund of the State of Rhode Island the charges for the tuition of children of such deceased or totally and permanently disabled police officer."

Because the Statute in question does not contain a definitions section, one must look to other legal authorities to determine the definition of the term "permanent and total disability" as used in the statute. According to Black's Law Dictionary (Revised Fourth Edition), a physical disability is a "disability or incapacity caused by physical defect or infirmity, or bodily imperfection or mental weakness". The term may also apply to any impairment of mind or body rendering it impossible for one to follow continuously a substantially gainful occupation without seriously impairing health. A

Arthur J. Newton, Secretary
Board of Relief for Policemen
March 2, 1988
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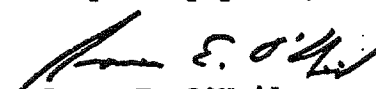
disability is considered permanent when it is of such a nature as to render it reasonably certain to continue throughout the lifetime of the person. Starnes v. United States, 13 F.2d 212, E.D. Tex. 1926) A total disability to follow one's usual occupation arises where one is incapacitated from performing any substantial part of his or her ordinary duties, though still able to perform a few minor duties and be present at his or her place of business. Fidelity and Casualty Company of New York v. Bynum, 221 Ky. 450, 298 S.W. 1080 (1927). A "total disability" (within an insurance policy) does not mean absolute physical disability to transact any business pertaining to one's occupation, but disability from performing substantial and material duties connected with it. Jacobs v. Loyal Protective Insurance Company, 97 Vt. 516, 124 A. 848 (1924); see Black's Law Dictionary, at page 548. "Permanent disability" (within an insurance policy) does not mean that the disability must continue throughout the life of the insured, but it connotes the idea that the disability must be something more than temporary, and at least presumably permanent, Commonwealth Life Insurance Company v. Obesen, 257 Ky. 622, 78 S.W.2d 745 (1935).

A policeman who receives a "permanent disability" from law enforcement work, but is able to work or operate a business is not necessarily "totally and permanently" disabled under the statute. The Act refers to being totally and permanently disabled. Therefore, although one may be permanently disabled, if the police officer is not also totally disabled he or she is not within the scope of the act.

Notwithstanding the foregoing opinion, I would advise you to consider any definition of total and permanent disability that may be contained in a collective bargaining agreement governing the police officer petitioning for benefits under this statute. The Board of Relief for Policemen may also want to approach the legislature to seek a clarification of the law by amending the Act to include a definition section which would define the terms used in the Act.

Your final question concerning whether a police officer terminated from a position due to alcoholism, who later contends that the cause for termination was a result of work-related stress, can be answered in the negative. Stress is not an "injury received" and hence the statute would not apply.

Very truly yours,


James E. O'Neil
Attorney General

JEO:TJT:mcd

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State of Rhode Island and Providence Plantations

DEPARTMENT OF THE ATTORNEY GENERAL

72 Pine Street, Providence, RI 02903

(401) 274-4400

Jeffrey B. Pine, Attorney General

November 3, 1994
Unofficial Opinion No. U94-29

Arthur J. Newton
Department of Labor
Board of Relief for Policemen
610 Manton Avenue
Providence, R.I. 02909

Dear Mr. Newton:

I write in response to your September 1, 1994 letter requesting an advisory opinion concerning R.I. Gen. Laws § 45-1904.2 (sic.). Specifically, you request whether the four year maximum period for completing a degree, pursuant to the statute, refers to an academic year or a calendar year. You further request whether the Board may define the term "year" in its rules and regulations.

I assume that you are in fact questioning § 45-19-4.1(a) which provides for tuition benefits for qualifying students:

... for such period of time as shall equal
the normal time for completing the courses
regularly offered by the institution, but in
no case more than four (4) years. (emphasis
added).

As you concluded, the statute does not state whether the four year maximum refers to academic years or to calendar years. Consequently, an ambiguity results in applying the statute to a student who begins school in September, as is the usual case, but does not complete studies by June of his or her fourth year of study. In that instance, applying an academic year definition would mean that the student is not eligible for benefits for courses taken in June, July and August following their last academic year of study. On the other hand, applying the calendar year definition would permit the student to finish courses in that last three-month period.

Arthur Newton
November 3, 1994
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The general rule of statutory interpretation is that words must be given their literal meaning, unless a different meaning is obvious on the face of the statute. State v. Capone, 115 R.I. 426, 347 A.2d 615 (1975). However, where the words may be susceptible to another interpretation, their meaning may be clarified by reference to other words in the statute. Howard Union of Teachers v. State, 478 A.2d 563 (R.I. 1984). Any ambiguity must be resolved by determining legislative intent from the language, nature and object of the statute, and giving the enactment the meaning most consistent with its policies or obvious purposes. F.H. Buffinton v. Hanrahan, 622 A.2d 470 (R.I. 1993); Gilbane v. Poulas, 576 A.2d 1195 (R.I. 1990); Lake v. State, 507 A.2d 1349 (1986).

In my opinion, the intent of the statute is twofold. First, the statute seeks to specifically limit benefits to "such period of time as shall equal the normal time for completing the courses regularly offered by the institution". It is my understanding that the normal time would be four academic, as opposed to calendar years. Second, the statute then limits tuition benefits to degrees which can be earned within four years - associates' and bachelors' degrees as opposed to masters' or doctoral degrees.¹ Consequently, it is my opinion that viewing the words "but in no case more than four (4) years" in light of the overall intent and context of the statute, benefits are to be afforded for four academic years.

This reading of the statute is consistent with the rules of statutory which provide that legislation which confers economic benefits shall be strictly construed against the claims of the grantee. Sutherland Stat. Const. § 63.02 (5th Ed.) and cases cited therein. While I understand the problems caused by limiting tuition benefits to a period of four academic years, the statute serves legitimate public purposes by limiting the financial liability of the Board and requiring students to complete their degrees within the ordinary course of time.

Your second question is whether the Board would exceed its authority and violate the law if it adopted rules and regulations recognizing the four year limit as being four calendar years. While the board may issue rules and regulations which implement and interpret statutory law, it may

¹ See unofficial advisory opinion U94-03 to you, concluding that benefits for a five-year course of study (pharmacy degree) may only be paid for four of the five years.

Arthur Newton
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not implement or interpret the law in a manner which alters or amends the scope of the statute. In re Advisory Opinion to the Governor, 504 A.2d 456 (R.I. 1986). However, where provisions of a statute are unclear or subject to more than one reasonable interpretation, the enforcing agency may issue an interpretive regulation, and that regulation will be given weight and deference by a court as long as the agency construction is not clearly erroneous or unauthorized. Gallison v. Bristol School Committee, 493 A.2d 164 (R.I. 1985). Since it is my belief that the statute intends to limit benefits to four academic years, I cannot encourage the Board to define the term "year" to mean a calendar year. However, since this opinion, like all advisory opinions of the Attorney General, is merely advisory in nature and has no binding effect on the Board in a court of law, the Board may otherwise define the term "year" if it believes that such an interpretation is not "clearly erroneous" and does not alter or amend the scope of the statute.

If you have any further questions concerning this matter, please feel free to contact me.

Very truly yours,



Lisa Dinerman
Special Assistant Attorney General
Ext. 2357

LD:asm
2670H/5



State of Rhode Island and Providence Plantations

DEPARTMENT OF THE ATTORNEY GENERAL

72 Pine Street, Providence, RI 02903
(401) 274-4400

Jeffrey B. Pine, Attorney General

RECEIVED DEC 5 1994

December 2, 1994
Unofficial Opinion No.U94-33

Arthur J. Newton,
Secretary
Board of Relief for Policemen
610 Manton Avenue
Providence, Rhode Island 02909

Dear Mr. Newton:

I write in response to your request for an advisory opinion concerning whether the Board may apply the definition of "totally and permanently" injured or disabled in § 45-19-4.1 to the use of that phrase in § 45-19-4.2.

Section 45-19-4.1(a) provides for tuition benefits to children of deceased or totally and permanently disabled police officers. The terms "totally and permanently disabled" is defined "for purposes of [that] section" as meaning "any impairment of mind or body making it impossible for one to follow continuously a gainful occupation". R.I. Gen. Laws § 45-19-4.1(b).

Section 45-19-4.2 provides for tuition to police officers who become "totally and permanently disabled". The quoted phrase is not defined in section 45-19-4.2.

In my opinion, the term "totally and permanently disabled" in § 45-19-4.2 may be, and indeed should be, given the definition as it carries in § 45-19-4.1. Where the legislature has defined a term in its enactment, that definition is binding unless mechanical application of the statutory definition creates obvious incongruities in the language of a statute and destroys its purpose. C-Line, Inc. v. U.S., 376 F.Supp 1043 (D.C.R.I. 1941); Ayers-Schaffner v. Solomon, 461 A.2d 396 (R.I. 1983). In addition, statutory definitions are indicative of legislative intent. State v. Delaurer, 488 A.2d 688 (R.I.

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1985). Finally, the rules of statutory construction provide that statutes which are not inconsistent with one another and which relate to the same subject matter should be considered together so that they will harmonize with each other and be consistent with their general objective and scope. Pickering v. American Emp. Ins. Co., 282 A.2d 585, 109 R.I. 143 (1971); State v. Ahmadjian, 483 A.2d 1070 (R.I. 1981).

Applying the above, it certainly appears that the legislature intended to define the term "totally and permanently disabled" for purposes of administering tuition benefits. Since the legislature did not provide a different definition of "totally and permanently disabled" in § 42-19-4.2, it is logical to conclude that the same definition should apply to both children of disabled police officers and disabled police officers themselves. I therefore find it is within the authority of the Police Board to interpret § 45-19-4.2 to include the definition enunciated in § 45-19-4.1(b).

Very truly yours,



Lisa Dinerman
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Telephone ext. 2357

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Peter F. Kilmartin, Attorney General

March 6, 2014

Via Electronic and Regular Mail

Sean M. Fontes, Executive Counsel
Department of Labor and Training
1511 Pontiac Avenue
Cranston, RI 02920

Re: Formal Request for Opinion/The Board of Policemen's Relief and The Board of Fire Fighter's Relief

Dear Mr. Fontes:

On November 12, 2013, you requested, on behalf of the Department of Labor and Training ("DLT"), a legal opinion from this office concerning the Board of Policemen's Relief and the Board of Firefighter's Relief. Both of these boards are created by the Rhode Island General Laws and administered by DLT. Both boards are responsible for administering funds that provide benefits to qualifying public safety officers and/or family members when the police officer or firefighter is either deceased or "totally and permanently disabled" as a result of their service.

These boards are administered under two distinct sections of the Rhode Island General Laws, both of which may be found in Chapter 19 of Title 45, which is entitled, "Relief of Injured and Deceased Fire Fighters and Police Officers." Although both sections use the phrase "totally and permanently disabled," you noted in your request that this phrase is applied differently by each board.

In the case of firefighters, you advised that, "firefighters qualify for benefits if they are on a disability pension and/or working another job, unrelated to firefighting." The practice for police officers, however, has been that "police officers do not qualify for benefits if they are working another job, whether related to police work or not."

You further advised that this distinction apparently is derived from inclusion of the following phrase only into Section 45-19-4.1, which specifically applies to police officers:

“For the purpose of this section, the words ‘totally and permanently disabled’ means any impairment of mind or body making it impossible for one to follow continuously a gainful occupation.”

Since receipt of your request, this office has also been contacted by the Bureau of Audits, which requested an update on the status of this request, as it was apparently triggered by an audit conducted by that office. Regardless of the triggering event for this specific request, it is clear that issues surrounding applicability of the definitions within these statutes have been in question for many years. In fact, you provided us with a copy of an unofficial opinion from this office issued on December 2, 1994 concerning the same statutory scheme.

Question Presented

Your specific question was: “In light of a recent review conducted by the State’s Bureau of Audits, the department (DLT) has decided to review this matter closer. As such, the department is requesting a formal opinion on *whether both boards should be using the same definition of ‘totally and permanently disabled’ in light of pertinent statutory provisions.*” (Emphasis provided in request for opinion.)

To be clear, it is important to note that there is no indication that your request suggests, in any way, that those applying for disability pensions were not injured in the line of duty. Therefore, we start with the premise that the class of persons impacted by this scheme are those whose career as a firefighter or police officer has been prematurely ended due to a genuine job related injury.

Discussion

In responding to this inquiry, The Office of Attorney General (“Office”) reviewed applicable case law, which sets out the procedure for resolving discrepancies between statutes.

As the Rhode Island Supreme Court noted as recently as in the case of State v. Diamante, 83 A.3d 546 (R.I. 2014), decided on January 30, 2014:

“It is a fundamental principle that, “when the language of a statute is clear and unambiguous, this Court must interpret the statute literally and must give the words of the statute their plain and ordinary meanings.” Accent Store Design, Inc. v. Marathon House, Inc., 674 A.2d 1223, 1226 (R.I.1996); see also DeMarco v. Travelers Insurance Co., 26 A.3d 585, 616 (R.I.2011); Sidell v. Sidell, 18 A.3d 499, 504 (R.I.2011). It is only when a statute is ambiguous that we “apply the rules of statutory construction and examine the statute in its entirety to determine the intent and purpose of the Legislature.” Tarzia v. State, 44 A.3d 1245, 1252 (R.I.2012) (internal quotation marks omitted); see also Downey v. Carcieri, 996 A.2d 1144, 1150 (R.I.2010).”

The Rhode Island Supreme Court has long made clear, that “[it][is] obligated to give effect to all of the act’s provisions, with no sentence, clause, or word construed as unmeaning or surplusage.” State v. Caprio, 477 A.2d 67 (R.I. 1984); In re Rhode Island Com’n for Human Rights, 472

A.2d 1212 (R.I. 1984). In performing the function of statutory interpretation, the Court must ascertain the intent of the Legislature and effectuate that intent whenever it is within the legislative authority. Bassett v. DeRentis, 446 A.2d 763 (R.I. 1982); Gott v. Norberg, 417 A.2d 1352 (R.I. 1980). In doing so, the court will examine language, nature, and object of the statute.” Berthiaume v. School Committee of Woonsocket, 397 A.2d 889 (R.I. 1979).

The Supreme Court also stated, “...this Court has made it crystal clear that, [i]t is generally presumed that the General Assembly ‘intended every word of a statute to have a useful purpose and to have some force and effect.’” State v. Briggs, 58 A.3d 164, 168 (R.I.2013) (quoting Curtis v. State, 996 A.2d 601, 604 (R.I.2010)). Indeed, we have held that the plain statutory language is the best indicator of legislative intent. State v. Santos, 870 A.2d 1029, 1032 (R.I.2005).

The Supreme Court, however, will not construe a statute “to achieve [a] meaningless or absurd result[.]” Id. (quoting Ryan v. City of Providence, 11 A.3d 68, 71 (R.I.2011)). Rather, when interpreting statutes, a court should construe “each part or section * * * in connection with every other part or section to produce a harmonious whole.” 2A Norman J. Singer & J.D. Shambie Singer, Sutherland Statutes and Statutory Construction § 46:5 at 189–90 (7th ed.2007). See, Zambarano v. Retirement Bd. of Employees' Retirement System of Rhode Island, 61 A.3d 432 (R.I., 2013).

Therefore, the first task in statutory construction is to determine whether or not the statute has a plain meaning. DeMarco v. Travelers Insurance Co., 26 A.3d 585 (R.I. 2011). If a statute is found to be unambiguous, its plain meaning shall apply. State v. Graff, 17 A.3d 1005, 1010 (R.I. 2011).

Although it can be argued that the phrase “totally and permanently disabled” has a plain meaning, the decision of the legislature to define that term only in Section 45-19-4.1 (applying to police officers) prompts further analysis. In addition, the term “gainful occupation” is not one that enjoys a similar universally understood meaning.

The importance of assigning the plain meaning to a word or phrase, “is particularly true where the Legislature has not defined or qualified the words used within the statute.” D'Amico v. Johnston Partners, 866 A.2d 1224 (quoting Markham v. Allstate Insurance Co., 352 A.2d 651 (R.I. 1976)). (emphasis added). In this instance, although the Legislature has provided a definition for the term “totally and permanently disabled,” it did so in only one of the two statutes at issue. For this reason, we must go beyond the plain meaning in our analysis.

Given that the statutes at issue, which were both initially adopted as part of chapter 267 of the Public Laws of 1979, contain non-identical definitions of the critical phrase “totally and permanently disabled,” it cannot be said that the statutes are “clear and unambiguous” and that the terms within the statute have a “plain meaning” for the purposes of this analysis.

When the legislature defines terms used in its enactments, those definitions are binding on the courts. Ayers-Schaffner v. Solomon, 461 A.2d 688 (R.I.1985). “[S]tatutory definitions are themselves an indication of legislative intent, and [the] [C]ourt will ordinarily give strict meaning to those definitions.” State v. Delaurer, 488 A.2d at 693. Additionally, and of particular relevance for this matter, “where one provision is part of the overall statutory scheme,

the legislative intent must be gathered from the entire statute and not from an isolated provision. In re Rhode Island Com'n for Human Rights, 472 A.2d at 1212. Further, "[w]hen...determin[ing] the true import of statutory language, it is entirely proper...to look to the sense and meaning fairly deducible from the context." In re Brown, 903 A.2d at 150 (R.I. 2006). (quoting In re Estate of Roche, 109 A.2d 655 (N.J. 1954)).

As noted, the statutes you have asked us to opine on are part of a larger statutory scheme entitled: "Relief of Injured and Deceased Fire Fighters and Police Officers." The statutes are remedial in nature, as each seeks to provide remedy or facilitate remedies to qualifying fire fighters and police officers and their children. Generally, statutes that establish rights not recognized at common law are subject to strict construction. Ayers-Schaffner v. Solomon, 461 A.2d 688 (R.I. 1985). Nevertheless when a statute is remedial in nature, like the ones at issue here, it will be construed liberally. Id.

The rule of statutory construction provides that statutes which are not inconsistent with one another and which relate to the same subject matter should be considered together so that they will harmonize with each other and be consistent with their general objective and scope. Pickering v. American Emp. Ins. Co., 282 A.2d 585 (R.I. 1971); State v. Ahmadjian, 483 A.2d 1070 (R.I. 1981). Indeed, it would be "foolish and myopic literalism to focus narrowly on "one statutory section without regard for the broader context." In re Brown, 903 A.2d at 150. Title 45 should be considered as "...a whole; individual sections must be considered in the context of the entire statutory scheme, not as if each section were independent of all other sections." Sorenson v. Colibri Corp., 650 A.2d at 128 (R.I. 1994); Bailey v. American Stores, Inc./Star Market, 610 A.2d 117 (R.I. 1992); Stone v. Goulet, 522 A.2d 216 (R.I. 1987). The notion that the Legislature intended to provide inequitable remedies between children of police officers and children of fire fighters is absurd. This would be an illogical interpretation of the Legislature's intent. R.I.G.L. §§ 45-19-4.1 and 45-19-12.1 should be considered together. The definition of "totally and permanently disabled" is a part of an overall scheme and it should apply to the entire statute; the utilization of which will not provide for incongruities, but rather will be consistent with the intent of the statute.

Conclusion

Therefore, to answer the specific question you posed, it is the opinion of this Office that, "*both boards should be using the same definition of 'totally and permanently disabled' in light of pertinent statutory provisions.*" Clearly, it makes no sense to apply different rules to injured police officers and to injured firefighters, and the law, as it exists, does not support such a distinction given the rules of statutory construction.

We are mindful that the Bureau of Audits has, by separate correspondence, requested an answer to this inquiry without further delay. For that reason, we specifically conclude our inquiry into this complex issue without expressing a preference for one statutory definition over the other, and note that to do so would be beyond the scope of your specific request.

Given the longstanding confusion over the disparate treatment of disabled firefighters and police officers under the existing statutory scheme, we do not endorse resolving this critical issue through application of statutory construction principles. The issue is simply too important to those injured in the line of duty, and to their families, to resolve in that manner.

As this confusion has its roots in the enabling language enacted by the General Assembly, resolution of this issue should be found through the legislative process, where all of those impacted by this issue may have their voices heard.

Sincerely,

A handwritten signature in cursive script, appearing to read "Gerald J. Coyne".

Gerald J. Coyne
Deputy Attorney General