



STATE OF ARKANSAS
OFFICE OF THE ATTORNEY GENERAL
JUSTICE BUILDING, LITTLE ROCK 72201

STEVE CLARK
ATTORNEY GENERAL

(501) 371-2007

OPINION NO. 85-28

January 29, 1985

Honorable Pat Flannagin
State Representative
836 Calvert Road
Forrest City, Arkansas 72335

Dear Rep. Flannagin:

This is in response to your opinion request wherein you posed the following inquiries.

1. (a) Under Act 436 of 1967, as amended, may a college board establish two or more alternate retirement plans underwritten by the same or separate companies and permit employees to choose from the alternate plans established?
- (b) Would your answer be the same if the question concerned two or more alternate plans established by the State Board of Vocational Education under Act 480 of 1983?
2. (a) Under Act 436 of 1967, as amended, may a college board establish a single alternate retirement plan underwritten by two or more companies and under which each employee is given various options?
- (b) Would your answer be the same if the question concerned a plan with options established by the State Board of Vocational Education under Act 480 of 1983?

Act 436 of 1967 and Act 480 of 1983 provide in pertinent part as follows:

80-1458. Alternate retirement plan - Retirement and death benefit contracts - Contribution. - On and after July 1, 1967, the board of any college and the Commission may establish and maintain an Alternate Retirement Plan which shall authorize the purchase of contracts providing

retirement and death benefits for staff members and Commission employees. Under such plan, staff members and Commission employees shall contribute, to the extent authorized or required, toward the purchase of such contracts which shall be issued to and become the property of the participants. (Acts 1967, No. 436, §2, p. 1013.)

80-1459. Methods of providing benefits under alternate retirement plan. - An Alternate Retirement Plan may be a separate system or fund or may be such as participates in a larger system or fund with respect to some or all of the benefits provided thereunder. The benefits to be provided for or on behalf of staff members and Commission employees under an Alternate Retirement Plan may be provided through insurance companies and annuity contracts, both fixed and variable in nature, or a combination thereof, as specified in such plan, which insurance policies and annuity contracts may be obtained from any insurance company authorized to do business in this State or from any nonprofit company or companies organized and operated exclusively for the purpose of aiding and strengthening education or scientific institutions by issuing insurance or annuity contracts only to or for the benefit of such institutions or individuals engaged in their services; provided, however, that in any action brought by a staff member or commission employee on a policy or contract, any official of the college or the Executive Director of the Commission shall be deemed to be the agent of any such nonprofit company only for the purpose of service of process on such contract or policy, and for no other purpose. (Acts 1967, No. 436, §3, p. 1013.)

80-1467. Alternate retirement plan authorized - Purchase of contracts - Contribution - adoption of written plan. - On or after July 1, 1983, the Board may establish and maintain an Alternate Retirement Plan which shall authorize the purchase of contracts providing retirement and death benefits for staff members. Under such plan, staff members shall contribute, to the extent authorized or required, toward the purchase of such contracts which shall be issued to and become the property of the participants. This Alternate Retirement Plan shall be administered by the Board pursuant to a written Alternate Retirement Plan document, which shall be formally adopted by the Board prior to establishment of the Alternate Retirement Plan. (Acts 1983, No. 480, §2, p. __.)

80-1468. Methods of providing benefits under alternate plan. An Alternate Retirement Plan may be a separate system or fund or may be such as participates in a larger system or fund with respect to some or all of the benefits provided thereunder. The benefits to be provided for or on behalf of staff members under an Alternate Retirement Plan may be provided through insurance policies or annuity contracts, both fixed and variable in nature, or a combination thereof, as specified in such plan, which insurance policies and annuity contracts may be obtained from any insurance company authorized to do business in this State or from any non-profit company or companies organized and operated exclusively for the purpose of aiding and strengthening educational or scientific institutions by issuing insurance or annuity contracts only to or for the benefit of such institutions or individuals engaged in their services; provided, however, that in any action brought by a staff member on a policy or contract, any School, School official or any member of the Board shall be deemed to be the agent of any such non-profit company or insurance company only for the purpose of service of process on such contract or policy, and for no other purpose. (Acts 1983, No. 480, §3, p. __.)

Clearly, a cursory reading of these Acts reveals that they are almost identical. Hence, the answers to your questions 1(b) and 2(b) will be in the affirmative inasmuch as there is no significant difference between the Acts in question.

The essence of your question 1(a) is whether more than a single "Alternate Retirement Plan" may be available from which employees will be permitted to choose. Although both Acts in question use the singular tense in referring to "Plan" the answer to your question 2(a) supports the conclusion that more than one Alternate Retirement Plan is allowed under the Acts.

Your question 2(a) is whether an Alternate Retirement Plan may be underwritten by two or more companies. Clearly, §3 of Act 436 and §3 of Act 480 freely use the plural tense in reference to "policies," "contracts," "or a combination thereof." Further, those institutions which may participate in the alternate plan are "companies" and not one single institution.

Hence, this office can see no reason for concluding either that one single alternate retirement plan is all that is

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allowed or that there is any reason to limit the underwriting to a single financial institution.

This opinion, which I hereby approve, was prepared by Assistant General Attorney C. Randy McNair, III.

Sincerely,

A handwritten signature in dark ink, appearing to read "Steve Clark", written over the typed name.

STEVE CLARK
Attorney General

SC:CRM:jkb