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STATE OF WASHINGTON
1/6/2020
BY SUSAN L. CARLSON
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No. 98047-1
COA No. 78582-6-I

**THE SUPREME COURT
FOR THE STATE OF WASHINGTON**

HON. KELLI LINVILLE, Petitioner,

v.

STATE OF WASHINGTON DEPARTMENT
OF RETIREMENT SYSTEMS, Respondent.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR WHATCOM COUNTY
#17-2-01693-1

PETITION FOR REVIEW

BURI FUNSTON MUMFORD & FURLONG, PLLC

By PHILIP J. BURI
WSBA #17637
1601 F Street
Bellingham, WA 98225
(360) 752-1500

TABLE OF CONTENTS

INTRODUCTION	1
I. IDENTITY OF PETITIONER	2
II. COURT OF APPEALS DECISION	3
III. ISSUES PRESENTED FOR REVIEW.	3
IV. STATEMENT OF THE CASE	4
A. The Evolution from Estoppel to Dual Membership. .	4
B. Mayor Linville's Service as a Public Employee	5
ARGUMENT	8
V. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED.	8
A. The Legislature Adopted The Portability Act For Public Employees Like Mayor Linville	9
B. The Court of Appeals' Decision Frustrates This Legislative Purpose	13
C. The Department's Statutory Construction Creates Unlikely, Unreasonable and Strained Consequences	15
CONCLUSION	18

TABLE OF AUTHORITIES

Washington Supreme Court

<u>Carranza v. Dovex Fruit Co.</u> , 190 Wn.2d 612, 416 P.3d 1205 (2018)	8
<u>Whatcom Cty. v. City of Bellingham</u> , 128 Wn.2d 537, 909 P.2d 1303 (1996)	3
<u>State v. Elgin</u> , 118 Wn.2d 551, 825 P.2d 314 (1992).	14

Washington State Court of Appeals

<u>Linville v. Dep't of Ret. Sys.</u> , ___ Wn. App. 2d ___, 452 P.3d 1269 (2019).....	2, 8, 13, 14
---	--------------

Other Authorities

1987 Laws of Washington, Ch. 192 § 9.	4, 12
1988 Laws of Washington, Ch. 195 § 5	12
WSR 18-05-098 (February 21, 2018).....	17

Codes and Regulations

RCW 41.04.270.....	3, 4, 9, 10, 12
RCW 41.54.010	3, 5, 9, 10, 11, 14
WAC 415-108-725.....	8

INTRODUCTION

This Petition asks whether a public employee deserves a retirement benefit that reflects her career compensation. Kelli Linville, Mayor of the City of Bellingham, began serving the public on September 1, 1976 as a speech pathologist for the Bellingham School District. She enrolled in the Teachers' Retirement System (TRS) Plan 1, and for the next 35 years contributed to the Plan, even while representing the 42nd District in the State House of Representatives.

In 2011, Ms. Linville stepped down from the Legislature and won election as Bellingham's mayor. She also became eligible to join the Public Employees' Retirement System (PERS). When she applied, however, the Department of Retirement Systems denied her entrance, concluding she was eligible to retire under TRS and cannot become a "dual member" of a second system under RCW 41.54.010(4). But Mayor Linville never retired, and never applied for or received retirement benefits from TRS.

Mayor Linville filed this action under the Administrative Procedure Act, and on June 7, 2018, Whatcom Superior Court Judge Raquel Montoya-Lewis reversed the Department's denial. "As Linville has shown in the record below, the dual member statute

RCW 41.54.010(4) was enacted to modify the estoppel statute and address the public employee who, rather than retire and draw benefits, chooses to continue working in the public sector in another area.” (6/7/18 Order Reversing Denial at 2; CP 289). The court directed the Department to enroll Mayor Linville in PERS.

On appeal, the Court of Appeals Division I reversed.

To many, the DRS order may seem harsh. Harsher still may appear our decision. But DRS was correct in its determination. Any ameliorative action must come from the legislature.

Linville v. Dep't of Ret. Sys., __ Wn. App. 2d __, 452 P.3d 1269, 1275 (2019). The Legislature adopted dual membership to ensure the retirement benefit from public service “*reflect[s] the career compensation.*” (Bill Report SSB 5150; Administrative Record (AR) 111; CP 128) (emphasis added). Because the Court of Appeals improperly construed the retirement statutes to thwart this purpose, Mayor Linville now petitions for review.

I. IDENTITY OF PETITIONER.

Kelli Linville Respondent in the Court of Appeals, asks this Court to accept review of the Court of Appeals’ decision terminating review designated in Part II of this Petition.

II. COURT OF APPEALS DECISION.

Mayor Linville seeks review of the December 2, 2019 published decision from the Court of Appeals, Division I. A copy of the decision is in the Appendix at pages A-1 to A-12.

III. ISSUES PRESENTED FOR REVIEW

Mayor Linville's Petition presents two issues for review:

A. Under RCW 41.04.270, State workers with more than 15 years' service who (1) receive a retirement allowance, (2) are eligible to retire, or (3) are beneficiaries of a disability allowance cannot join a second retirement system. But under RCW 41.54.010(4)(c), State workers who have "never been retired for service" and are "not receiving a disability retirement or disability leave benefit" may join a second system as dual members. Did Appellant Department of Retirement Systems err by excluding one subset of those "eligible to retire" from dual membership?

B. When construing an ambiguous statute, this Court "avoid[s] a literal reading if it would result in unlikely, absurd or strained consequences." Whatcom Cty. v. City of Bellingham, 128 Wn.2d 537, 546, 909 P.2d 1303 (1996). The Department's interpretation, which the Court of Appeals adopted, creates unfair and unreasonable results contrary to the Legislature's express intent

to compensate retirees fairly. Did the Court of Appeals err by endorsing “harsh” consequences rather than following the Legislature’s intent and purpose?

IV. STATEMENT OF THE CASE

A. The Evolution from Estoppel to Dual Membership

Until 1976, State workers could join any retirement system if they were eligible. But concerned that “a public employee has the ability to draw one public pension while working and earning credit toward a second pension”, commonly called “double dipping”, the Legislature in 1976 barred employees with more than 15 years’ service credit from joining a second system. (AR 38; CP 55) (Bill Summary); RCW 41.04.270. The law estopped most senior public employees from contributing to more than one retirement system.

Because this had severe consequences for recruiting and retaining valuable employees, the Legislature in 1987 passed ESSB 5150, the Portability of Public Employment Retirement Benefits Act. 1987 Laws of Washington, Ch. 192. (“Portability Act”). The Portability Act made two substantial changes to State retirement laws. First, it amended RCW 41.04.270 to exempt “dual members” from the harsh effects of estoppel. Second, it created a new chapter in Title 41 establishing portability, which includes a statutory

definition of “dual member”. RCW 41.54.010(4). A dual member is an employee who:

- is or becomes a member of a system on or after July 1, 1988;
- has been a member of one or more other systems, and
- has never been retired for service from a retirement system and is not receiving a disability retirement or disability leave benefit from any retirement system...

RCW 41.54.010(4). Note that the third bullet point in the definition does not disqualify employees “eligible to retire”. Only those retired from service or receiving a disability payment are barred from dual membership.

B. Mayor Linville’s Service as a Public Employee

Kelli Linville has been in public service for 43 years. On September 1, 1976, she began work as a speech pathologist for the Bellingham School District and enrolled as a member of the Teachers’ Retirement System (TRS) Plan 1. (Stipulations of Fact; AR 83; CP 100). For the next 35 years, she contributed to the Teachers’ system. But she was not solely a teacher during that period. In 1992, Ms. Linville won election to the State House of Representatives, representing the 42nd District. (AR 83; CP 100). She continued to contribute to TRS during her tenure as Representative.

Ms. Linville stepped down from the Legislature on January 10, 2011. (AR 84; CP 101) That is also the day of separation from TRS employment. Although she had just over 30 years' service credit, making her eligible to retire from TRS Plan 1, she did not retire, never applied for retirement benefits, and never drew retirement benefits or disability payments from a public retirement system. (AR 84; CP 101).

Instead, she ran for Mayor of the City of Bellingham and won. On January 1, 2012, Mayor Linville took office and has served continuously since then. As an elected public official, Mayor Linville can join the Public Employees' Retirement System (PERS). When she applied, the Assistant Director for the Department of Retirement Systems denied her entrance under the estoppel statute. The Department would not consider her request to join as a dual member, summarily concluding she did not qualify. (AR 95; CP 112) ("regardless, this interpretation is how the Department applies this law"). Mayor Linville appealed to the Department's Petition Examiner, who affirmed the denial (AR 102; CP 119), and to the Department's Presiding Officer, who entered the Department's Final Order denying the application. (Final Order; AR 1; CP 18).

Having completed her administrative appeals, Mayor Linville sought review in superior court under the State's Administrative Procedure Act. On June 7, 2018, Whatcom County Superior Court Judge Raquel Montoya-Lewis overturned the Department's denial and allowed the Mayor to join PERS. Judge Montoya-Lewis concluded the dual member exception applied to employees like Mayor Linville.

Indeed, it appears the legislature created this dual enrollment status to address this very issue, so that workers who chose to work beyond their retirement eligibility would be rewarded for doing so under the Portability Act, by being able to choose to join a secondary retirement system, should doing so be of benefit.

(6/7/18 Order Reversing Denial at 2; CP 289).

The Department appealed, and on December 2, 2019, the Court of Appeals reversed the trial court, reinstating the Department's denial.

DRS did not act arbitrarily or capriciously but, rather, applied the statutes by which it is bound to the facts of Linville's application. The parties do not dispute that, without more, RCW 41.04.270(1)(b) estops Linville from attaining PERS membership due to her eligibility to receive a retirement allowance from another system. DRS considered whether Linville met the dual member exception and, relying on the plain language of the pertinent statute, properly concluded that she did not.

Linville v. Dep't of Ret. Sys., __ Wn. App. 2d __, 452 P.3d 1269, 1275 (2019). This is the first, and apparently only, Washington decision defining the scope and purpose of the dual member exception.

Mayor Linville respectfully requests this Court to accept review of her case, reverse the Court of Appeals, and provide needed guidance on this issue of substantial public interest.

ARGUMENT

V. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

This Court should accept review for three reasons. First, this case presents significant issues on the proper interpretation of State retirement statutes in general and the dual member exception in particular. Second, the Court of Appeal's rigid construction of the statutes contradicts this Court's direction that "statutes should be interpreted to further, not frustrate, their intended purpose." Carranza v. Dovex Fruit Co., 190 Wn.2d 612, 625, 416 P.3d 1205 (2018). Third, the Department's harsh treatment of employees like Mayor Linville conflicts with its lenience towards similarly situated State employees eligible for retirement. WAC 415-108-725 (distinguishing between "early" and "normal" retirement).

Under RAP 13.4, this case merits Supreme Court review.

A. The Legislature Adopted The Portability Act For Public Employees Like Mayor Linville.

The key to this case is the legislative purpose animating the Portability Act. As the Bill Report declared, without the Portability Act “a public service career may be completed with the retirement benefit received from the earlier system *not reflecting the career compensation.*” (Bill Report SSB 5150; AR 111; CP 128) (emphasis added). That is exactly what happened here. The Department’s flawed statutory interpretation deprives public employees like Mayor Linville of a full and fair retirement benefit.

The Department’s error is in not recognizing the difference between RCW 41.04.270(1), the estoppel statute, and RCW 41.54.010(4)(c), the definition of dual membership. When the Legislature limited state workers with more than 15 years’ credit from joining a second retirement system, it estopped three categories of employees:

any member or former member who (a) receives a retirement allowance earned by the former member as deferred compensation from any public retirement system authorized by the general laws of this state, or (b) is eligible to receive a retirement allowance from any public retirement system listed in RCW 41.50.030, but chooses not to apply, or (c) is the beneficiary of a disability allowance from any public retirement system listed in RCW 41.50.030.

RCW 41.04.270(1).

In contrast, the Legislature withholds dual membership – the exception to estoppel – from only two categories of employees, those “retired for service from a retirement system” and those “receiving a disability retirement or disability leave benefit from any retirement system.” RCW 41.54.010(4)(c). The definition does not withhold dual membership from public employees like Mayor Linville who are merely “eligible to retire”.

Mayor Linville has not retired for service from a retirement system or received a disability retirement or disability leave benefit. Yet, according to the Department, her decision in 1993 to remain in TRS, rather than join a second system, PERS, has proved costly.

After 30 years of service under TRS Plan 1, Mayor Linville’s average financial compensation was \$3,503. (AR 3; CP 20) As Mayor of Bellingham, in 2016 she earned a monthly salary of \$11,858. (AR 3; CP 20). Since the Department calculates retirement benefits based on years with the highest earnings, Mayor Linville will have substantially higher retirement benefits if she can contribute to PERS at her Mayoral salary in addition to her contributions to TRS as a teacher and legislator. The estoppel statute punishes

experienced workers who, although eligible to retire, want to continue serving the public in a different capacity.

In 1987 and 1988, the Legislature addressed this penalty to experienced employees by creating an exception to estoppel: dual membership. RCW 41.54.010(4). And Mayor Linville satisfies the three elements for the exception. First, as Mayor, she is eligible to become a member of PERS. (Final Order at 4; AR 4; CP 21) (“Chapter 41.40 RCW authorizes membership in PERS for elected (‘elective’) officials”). Second, she has been a member of TRS Plan 1. (Final Order ¶ 15; AR 3; CP 20). Third, she has never been retired for service from a retirement system and is not receiving a disability retirement or leave benefit. (Final Order ¶ 16; AR 3; CP 20) (“Ms. Linville has not applied for retirement from TRS Plan I, or retired from TRS”).

The Legislature purposely excluded “eligible to retire” from the list of employees who can never become dual members. Why? Because those eligible to retire are not receiving benefits and are not double dipping. Receiving retirement benefits, not bare eligibility, is the disqualifying condition.

To be eligible for the portability benefit the person must be a dual member (hold membership in two or more

retirement systems) on or after July 1, 1988, *and not retire based on service from any prior system.*

(SSB 5150 Bill Report; AR 124; CP 141) (emphasis added). The Legislature sought to reward valuable public employees like Mayor Linville who continue to work and contribute to the public even though they could retire. Allowing these employees to join a second system makes their service portable and ensures their retirement benefits reflect their career compensation.

Further proof of the Legislature's intent is in the 1988 amendment to the estoppel statute. When it created dual membership in 1987, the Legislature amended RCW 41.04.270(2) to provide that estoppel did not apply to "a dual member as defined in section 1 of this 1987 act." 1987 Laws of Washington, Ch. 192 § 9. This arguably made dual membership open to those who had received benefits, as well as those eligible to retire. In 1988, the Legislature amended RCW 41.04.270(2) a second time to limit the dual membership exception only to those eligible to retire. "Subsection 1(b) of this section [estopping workers eligible to retire] does not apply to a dual member as defined in RCW 41.54.010." 1988 Laws of Washington, Ch. 195 § 5. The Legislature singled out "eligible to retire" as the only estopped category eligible to become

dual members. The Department's refusal to recognize this is a clear misreading of the statute and its legislative purpose.

B. The Court of Appeals' Decision Frustrates This Legislative Purpose

The Court of Appeals adopted the Department's position, concluding that estoppel applies to those employees who stay with one retirement system, become eligible to retire, and then seek to join a second system. At the heart of its decision, the court identified a glitch in the dual membership statute.

Linville seeks to use her current membership in TRS to satisfy RCW 41.54.01 0(4)(b) and then meet subsection (4)(a)'s requirement by becoming a member of PERS—thereby avoiding estoppel of membership in a second retirement system by becoming a member of a second retirement system. This interpretation was adopted by the superior court, essentially replacing RCW 41.54.010(4)(a)'s requirement that a dual member “is or becomes a member” of a new system with the words “*is, becomes, or applies to become a member.*” But we do not see any evidence in the plain language of the statute that the legislature intended this to be the case. Without a rewriting of the statute, the result favored by the superior court cannot be obtained.

Linville, 452 P.3d at 1273 (emphasis added).

Dual membership is an exception to estoppel. Yet, according to the Court of Appeals, an employee must become a dual member before estoppel applies to then qualify for the exception to estoppel.

Mayor Linville cannot join PERS, although eligible, because estoppel prevents her from qualifying for the very exception to estoppel. The court correctly identifies this outcome as “harsh”, but concludes its hands are tied. “Any ameliorative action must come from the legislature.” Linville, 452 P.3d at 1275.

This Court has the authority to effectuate the Legislature’s purpose in creating dual membership. The word “becomes” in RCW 41.54.010(4)(a) means eligible to join, otherwise, the dual membership exception reintroduces the full estoppel provisions, eliminating the exception. Assuming that RCW 41.54.010(4)(a) could have been stated more clearly, this Court may resolve this ambiguity in favor of career public servants – as the Legislature intended.

This court has the ultimate authority to determine the meaning and purpose of a statute. Our paramount duty in statutory interpretation is to give effect to the Legislature's intent. We avoid a literal reading of a statute if it would result in unlikely, absurd, or strained consequences. “The spirit or purpose of an enactment should prevail over the express but inept wording.” State v. Day, 96 Wn.2d 646, 648, 638 P.2d 546 (1981).

State v. Elgin, 118 Wn.2d 551, 555, 825 P.2d 314 (1992) (citations omitted).

As noted above, legislative history supports the opposite of the Court of Appeal's decision. Nowhere did the Legislature express intent to withhold dual membership from employees who are merely eligible to retire. The Court of Appeals erred by construing the retirement statutes narrowly, to the detriment of the workers entitled to benefit.

C. The Department's Statutory Construction Creates Unlikely, Unreasonable and Strained Consequences.

The Department's argument begins with a straightforward premise: no one eligible to retire may join a different retirement system. That is double dipping. An employee must become a dual member before becoming eligible to retire.

This premise breaks down quickly under close scrutiny. First, according to the Department, once employees become dual members, they may join an unlimited number of new retirement systems *regardless* of their eligibility to retire. Estoppel applies only to those employees who stick with one system throughout their career.

The Department's argument creates two classes of long-term state employees: those who joined a second system before becoming eligible to retire, and those who did not. For those who

did, under the Department's reading, dual membership permits them to join multiple retirement systems, regardless of their eligibility to retire. Only an employee who stays with one system until eligible to retire loses the ability to become a dual member.

The Department has created a false choice and an arbitrary distinction. Given the Legislature's intent to ensure retirement benefits reflect *career compensation*, it makes no sense to exclude one class of long-term employees while rewarding all others. Yet the Department conceded in the Court of Appeals that its interpretation does just that: "the dual member exception also allows certain dual members to join a third retirement system, who were otherwise prevented under the estoppel statute." (Opening Brief at 15 n.6). Two workers with identical service credits would have dramatically different retirement benefits. The Department punishes those workers who stay with one retirement system during their career.

The Department never advised State workers about this "choice". When she decided to stay with TRS, Mayor Linville had no warning, or reason to think she would lose her ability to join a second system later in her career. The Department's statutory argument creates this arbitrary and unfair result.

Second, the Department does not disqualify all “eligible-to-retire” employees from joining a second system. A recent amendment to WAC 415-108-725, effective April 28, 2018, creates another class of employees who can become dual members. Because the State now allows employees to take early retirement with less than full benefits, the Department prohibits dual membership for only those employees taking “normal retirement”.

According to the Department,

the retirement statutes prohibit membership in one retirement plan after becoming eligible to retire from another plan, to prevent members from *receiving a pension while also collecting wages for public employment*. When that provision was enacted, early retirement with a reduced benefit was not available. However, a member may now be eligible for an early retirement benefit that would be reduced to a small fraction of its value at full retirement age. This rule allows a member to defer retirement from the first plan, while earning benefits in another plan related to subsequent public employment.

WSR 18-05-098 (February 21, 2018) (emphasis added) (attached as Appendix B). Mayor Linville has never received a pension while collecting wages for public employment. The only difference between an early retiree and her is the *amount* of their pensions once they retire. The Department’s definition of dual membership hinges on the value of the pension, not the status of the employee.

Without citation, the Court of Appeals summarily upheld the Department's distinction.

The reason for this amendment is that the option of early retirement did not exist at the time of the estoppel statute's enactment, and it cannot be read to evince a fundamental change to the rule that dual membership eligibility hinges on the employee's status.

Linville, 452 P.3d at 1274 (2019). If being eligible to retire prevents an employee from becoming a member of a second system, why does a difference between early and normal retirement matter? The flaw is not that the Department allows early retirees to become dual members. The flaw is prohibiting normal retirees from doing the same. There is no reasonable difference between the two retirees other than the amount of their benefits. The Legislature never intended to create these unreasonable and irrational classes of retirees.

CONCLUSION

Mayor Kelli Linville deserves a retirement benefit that fairly represents her career compensation. It does not matter that in 1993, she remained in the State Teachers Retirement System, rather than opening a second account with the Public Employees Retirement System. The Department, not the Legislature, has decided to exclude eligible-to-retire employees from dual membership.

Whatcom County Superior Court Judge Raquel Montoya-Lewis appropriately reversed the Department's denial. Mayor Linville respectfully requests this Court to reverse the Court of Appeals, uphold the trial court, and direct the Department to accept the Mayor's application to PERS.

DATED this 2nd day of January, 2020.

BURI FUNSTON MUMFORD & FURLONG, PLLC



By

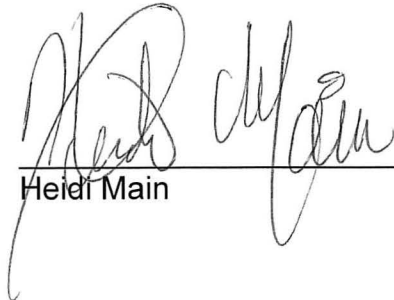
Philip J. Buri, WSBA #17637
1601 F. Street
Bellingham, WA 98225
360/752-1500

DECLARATION OF SERVICE

The undersigned declares under penalty of perjury under the laws of the State of Washington that on the date stated below, I mailed or caused delivery of the Petition for Review to:

Nam D. Nguyen
Attorney General of Washington
Revenue and Finance Division
7141 Cleanwater Drive, SW
Olympia, WA 98504-0123
Via Email: namn@atg.wa.gov

DATED this 2ND day of January, 2020.



Heidi Main

APPENDIX A

Linville v. Department of Retirement Systems, 452 P.3d 1269 (2019)

2019 Employee Benefits Cas. 460,387

452 P.3d 1269

Court of Appeals of Washington, Division 1.

Kelli LINVILLE, Respondent,

v.

State of Washington, DEPARTMENT OF
RETIREMENT SYSTEMS, Appellant.

No. 78582-6-I

|

FILED: December 2, 2019

Synopsis

Background: Mayor, a former teacher who belonged to teacher retirement system administered by Department of Retirement Systems (DRS), brought petition for judicial review of decision by DRS rejecting her application to join different public employee retirement system based on her eligibility to receive retirement allowance under teacher retirement system. The Superior Court, Whatcom County, No. 17-2-01693-1, Raquel Montoya-Lewis, J., reversed administrative decision. DRS appealed.

Holdings: The Court of Appeals, Dwyer, J., held that:

[1] mayor was not “dual member” who could apply for membership in new public employee retirement system, and

[2] regulation estopping employees who were eligible for “normal” retirement from applying to new retirement systems was consistent with estoppel statute.

Reversed.

West Headnotes (9)

[1] Administrative Law and Procedure

☞ Scope and Standards of Further Review

Administrative Law and Procedure

☞ Decision reviewed

The Court of Appeals reviews a final agency order based on the agency record, sitting in the same position as the superior court, and does not defer to the superior court ruling.

[2] Administrative Law and Procedure

☞ De novo review; plenary, free, or independent review

Administrative Law and Procedure

☞ Construction, interpretation, or application of law in general

When an agency order is challenged on the basis of an error of law, a court reviews the order de novo, but gives substantial weight to an agency’s interpretation of the law within its area of expertise. Wash. Rev. Code Ann. § 34.05.570(3)(d).

[3] Statutes

☞ Construction based on multiple factors

In determining the plain meaning of a statute, courts consider the ordinary meaning of words, the basic rules of grammar, and the statutory context to conclude what the legislature has provided for in the statute and related statutes; in so doing, the court construes the statute so that all the language used is given effect, with no portion rendered meaningless or superfluous.

[4] Statutes

☞ Unintended or unreasonable results; absurdity

Common sense informs a court’s analysis of statutory language, as courts avoid absurd results in statutory interpretation.

[5] Municipal Corporations

☞ Compensation

Public Employment

☞ Pensions and retirement benefits in general

Mayor, whose position was eligible for public employee retirement benefits and who became eligible for retirement under teacher retirement system, was not “dual member” under statute exempting dual members, that is, employees who had been members of multiple retirement systems, from general rule estopping public

employees who were eligible for retirement benefits from applying to join different retirement systems; mayor was only ever a member of teacher retirement system, and mere application to join different retirement system was insufficient to confer dual membership as determined at time of application. Wash. Rev. Code Ann. §§ 41.04.270, 41.04.270(2), 41.54.010(4).

[6] **Public Employment**

☞ Pensions and retirement benefits in general

The determination of dual membership status under the statutes governing public employee retirement is made at the time an individual applies for membership in a new retirement system, not after entry into that system. Wash. Rev. Code Ann. §§ 41.04.270(2), 41.54.010(4).

[7] **Public Employment**

☞ Pensions and retirement benefits in general

Regulation providing that public employees who were eligible for normal, non-early retirement under other retirement systems run by Department of Retirement Systems (DRS) were ineligible to participate in public employee retirement system unless they met statutory definition for dual membership in multiple retirement systems did not conflict with statutory definition of dual membership, but, rather, merely clarified that statute estopping public employees, other than dual members, eligible for retirement under one DRS-run retirement system from applying for membership in another system did not apply to employees eligible for early retirement benefits, and clarification was necessary because option of early retirement did not exist at time of estoppel statute's enactment. Wash. Rev. Code Ann. §§ 41.04.270(1)(b), 41.54.010(4); Wash. Admin. Code 415-108-725.

[8] **Administrative Law and Procedure**

☞ Review for arbitrary, capricious, unreasonable, or illegal actions in general

“Arbitrary and capricious,” in the context of judicial review of agency action, refers to willful and unreasoning action, taken without regard to or consideration of the facts and circumstances surrounding the action. Wash. Rev. Code Ann. § 34.05.570(3)(i).

[9] **Administrative Law and Procedure**

☞ Review for arbitrary, capricious, unreasonable, or illegal actions in general

Where there is room for two opinions, an administrative action taken after due consideration is not arbitrary and capricious even though a reviewing court may believe it to be erroneous. Wash. Rev. Code Ann. § 34.05.570(3)(i).

*1270 Appeal from Whatcom County Superior Court, Docket No: 17-2-01693-1, Honorable Raquel D. Montoya-Lewis, Judge

Attorneys and Law Firms

Dept. of Revenue A.g. Office, Attorney at Law, 7141 Cleanwater Lane Sw., P.O. Box 40123, Olympia, WA, 98504-0123, Nam Duc Nguyen, WA Attorney General's Office, P.O. Box 40123, Olympia, WA, 98504-0123, for Appellant(s).

Philip James Buri, Buri Funston Mumford & Furlong, PLLC, 1601 F. St., Bellingham, WA, 98225-3011, for Respondent(s).

PUBLISHED OPINION

Dwyer, J.

¶1 This is a case about a public employee's retirement benefits. Kelli Linville has been a member of the state's Teachers Retirement System (TRS), which is administered by the Department of Retirement Systems (DRS), since 1976. Although she served in public service positions that afforded her the opportunity to enroll in the Public Employees Retirement System (PERS), she remained in TRS until becoming eligible to retire. However, she did not then retire but, rather, assumed another PERS-eligible position.

¶2 At this point, her application to join PERS was rejected pursuant to a statute, RCW 41.04.270, that estops individuals from joining a new DRS-administered system if they are eligible to retire from one to which they already belong. Following an unsuccessful administrative appeal to DRS, Linville sought review in superior court, resulting in that court's reversal of the DRS decision. DRS now appeals, contending that the superior court incorrectly interpreted the pertinent statutes. We agree, reverse the superior court's order, and reinstate the decision of the agency.

I

¶3 DRS administers Washington's state employee retirement programs, including TRS and PERS. RCW 41.50.030. Kelli Linville *1271 became an employee of the Bellingham School District in 1976 and, at that time, enrolled as a member of TRS Plan 1. In 1992, Linville won election to the Washington House of Representatives, a PERS-eligible position. Following the commencement of her first term in 1993, she opted to continue accruing TRS service credits through her legislative service rather than enroll in a PERS plan.¹ Linville opted to remain in TRS throughout her time in the legislature. She left the legislature after losing a reelection campaign in 2010.²

¶4 At the time she left the legislature, Linville had accrued sufficient service credits to retire, having 30.83 years of TRS service credits. Although Linville ceased contributing to TRS at this time, she did not retire. Instead, she was elected as Bellingham's mayor in 2011. She began her first mayoral term on January 1, 2012, and is currently serving her second term. The mayor's job is PERS-eligible; however, because Linville had already accrued sufficient TRS service credits to qualify for a retirement allowance, she was denied PERS membership.

¶5 In denying her application, DRS cited to RCW 41.04.270(1)(b), which precludes members of one DRS system from joining a second system once they become eligible to receive retirement benefits through the system to which they belong.³

¶6 Linville met the criteria for application of this statute, having accumulated sufficient TRS credits to qualify for a retirement allowance. DRS also determined that Linville did

not meet the definition of "dual member" as that term is used in RCW 41.04.270(2). DRS maintained that the estoppel statute exists to prevent "double-dipping," or the practice of receiving benefits from more than one state retirement system. DRS maintained that the dual member exception exists to benefit individuals who have contributed to one system, *without* reaching retirement eligibility, allowing such employees to join and accrue benefits in a second system should they change jobs in mid-career. Linville's administrative appeal to DRS's petitions examiner was unsuccessful, and she sought judicial review in the Whatcom County Superior Court.

¶7 The superior court reversed DRS's decision on the basis that DRS erroneously interpreted the law. Regarding the interplay of the estoppel statute and the exception thereto, the court did "not see where in the legislation, or the legislative history, [the exception] was intended to exclude those who could retire but chose not to do so," and opined that "[i]f Linville did not qualify, the Court fails to see any employee who would, thus making the exception useless." The superior court ordered DRS to enroll Linville in PERS. DRS appeals.

II

¶8 Linville avers that DRS incorrectly interpreted and applied the pertinent statutes, RCW 41.04.270 and RCW 41.54.010(4), to conclude that she did not meet the definition of "dual member" contained in the latter statute. Linville essentially argues that persons may never be estopped from joining a second DRS system on the basis that they are eligible to collect a retirement allowance from one to which they already belong. For its part, DRS correctly asserts that such a reading of the statute broadens the dual member exception beyond anything that the legislature could have intended.

[1] ¶9 Washington's Administrative Procedure Act (APA), chapter 34 RCW, establishes the exclusive means for obtaining judicial review of an agency action. RCW 34.05.010. The party challenging a final agency order bears the burden of demonstrating that it should be overturned. RCW 34.05.570(1)(a). We review the order based on the agency record, sitting in the same position as the superior court, and do not defer *1272 to the superior court ruling. Waste Mgmt. of Seattle, Inc. v. Utils. & Transp. Comm'n, 123 Wash.2d 621, 633, 869 P.2d 1034 (1994).

[2] ¶10 Familiar principles guide our analysis. RCW 34.05.570(3)(d), which allows for relief when “[t]he agency has erroneously interpreted or applied the law,” is the basis for Linville’s first challenge to the DRS order. When an agency order is challenged on the basis of an error of law, we review the order de novo, but give substantial weight to an agency’s interpretation of the law within its area of expertise. Verizon Nw., Inc. v. Emp’t Sec. Dep’t, 164 Wash.2d 909, 915-16, 194 P.3d 255 (2008).

[3] [4] ¶11 In interpreting a statute, the “ ‘fundamental objective is to ascertain and carry out the Legislature’s intent.’ ” Citizens All. for Prop. Rights Legal Fund v. San Juan County, 184 Wash.2d 428, 435, 359 P.3d 753 (2015) (quoting Dep’t of Ecology v. Campbell & Gwinn, LLC, 146 Wash.2d 1, 9-10, 43 P.3d 4 (2002)). “ ‘[I]f the statute’s meaning is plain on its face, then the court must give effect to that plain meaning as an expression of legislative intent.’ ” Citizens All., 184 Wash.2d at 435, 359 P.3d 753 (alteration in original) (quoting Campbell & Gwinn, 146 Wash.2d at 9-10, 43 P.3d 4). In determining the plain meaning of a statute, we consider “the ordinary meaning of words, the basic rules of grammar, and the statutory context to conclude what the legislature has provided for in the statute and related statutes.” In re Forfeiture of One 1970 Chevrolet Chevelle, 166 Wash.2d 834, 839, 215 P.3d 166 (2009). In so doing, we “construe a statute ‘so that all the language used is given effect, with no portion rendered meaningless or superfluous.’ ” Seattle City Light v. Swanson, 193 Wash. App. 795, 810, 373 P.3d 342 (2016) (internal quotation marks omitted) (quoting Rapid Settlements, Ltd. v. Symetra Life Ins. Co. 134 Wash. App. 329, 332, 139 P.3d 411 (2006)). “Common sense informs our analysis, as we avoid absurd results in statutory interpretation.” State v. Alvarado, 164 Wash.2d 556, 562, 192 P.3d 345 (2008).

¶12 The parties do not dispute that RCW 41.04.270 bars employees who are enrolled in one DRS system, and are eligible to retire from that system, from enrolling and accruing benefits in a second system. Its language provides:

(1) Except as provided [elsewhere], on and after March 19, 1976, any member or former member who (a) receives a retirement allowance earned by the former member as deferred compensation from any public retirement system authorized by the general laws of this state, or (b) is eligible to receive a retirement allowance from any public retirement system listed in RCW 41.50.030, but chooses not to apply, or (c) is the beneficiary of a disability allowance from any public retirement system

listed in RCW 41.50.030 shall be estopped from becoming a member of or accruing any contractual rights whatsoever in any other public retirement system listed in RCW 41.50.030: PROVIDED, That (a) and (b) of this subsection shall not apply to persons who have accumulated less than fifteen years service credit in any such system.

(2) Nothing in this section is intended to apply to any retirement system except those listed in RCW 41.50.030 and the city employee retirement systems for Seattle, Tacoma, and Spokane. Subsection (1)(b) of this section does not apply to a dual member as defined in RCW 41.54.010.

RCW 41.04.270.

¶13 As the language of the statute shows, there are two major exceptions to estoppel: one for employees who have accumulated less than 15 years’ service credit in a state retirement system and one for dual members. The dispute herein concerns only the applicability of the exception for “dual members” contained in RCW 41.04.270(2). That exception provides that estoppel does not apply when an employee is a “dual member,” defined as follows:

(4) “Dual member” means a person who (a) is or becomes a member of a system on or after July 1, 1988, (b) has been a member of one or more other systems, and (c) has never been retired for service from a retirement system and is not receiving a disability retirement or disability leave benefit from any retirement system listed *1273 in RCW 41.50.030 or subsection (6) of this section.

RCW 41.54.010(4).

¶14 Thus, read together with the exception in RCW 41.04.270(2), the legislature allowed for dual enrollment in some circumstances in which an employee moves from one public job to another. Dual members are afforded the ability to combine service credits from multiple systems for the purpose of determining retirement eligibility and, once eligible to retire, to retire from all systems in which they are members

and use their base salary from any system as the compensation used to calculate their retirement allowance. RCW 41.54.030. However, dual members remain expressly prohibited from “double-dipping” by RCW 41.54.020(1), which states:

(1) Those persons who are dual members on or after July 1, 1988, shall not receive a retirement benefit from any prior system while dual members without the loss of all benefits under this chapter. Retroactive retirement in any prior system will cancel membership in any subsequent systems except as allowed under RCW 41.04.270 and will result in the refund of all employee and employer contributions made to such systems.

¶15 DRS maintains that Linville does not meet the definition of a dual member due to the requirement of RCW 41.54.010(4)(b). While she was a member of a system—TRS—on July 1, 1988, per subsection (a) of that statute, and while she has never been retired for service from a retirement system and is not receiving any disability retirement or disability leave benefit, per subsection (c), she has never been a member of any other system as required by subsection (b). Pursuant to DRS’s reading of the statute, because Linville was a member of only one system prior to commencing service in her current PERS-eligible position, she cannot satisfy subsection (4)(b), and thus does not meet the definition of a dual member.

[5] ¶16 Linville’s reading of the definitional statute, on the other hand, would enable an unretired member of one system to choose to become a dual member, *at any time*, by participating in another retirement system, regardless of retirement eligibility. Linville seeks to use her current membership in TRS to satisfy RCW 41.54.010(4)(b) and then meet subsection (4)(a)’s requirement by becoming a member of PERS—thereby avoiding estoppel of membership in a second retirement system by becoming a member of a second retirement system. This interpretation was adopted by the superior court, essentially replacing RCW 41.54.010(4)(a)’s requirement that a dual member “is or becomes a member” of a new system with the words “is, becomes, or applies to become a member.” But we do not see any evidence in the plain language of the statute that the legislature intended this

to be the case.⁴ Without a rewriting of the statute, the result favored by the superior court cannot be obtained.

[6] ¶17 Having established that Linville does not qualify for an exception to the estoppel statute, we are left to apply that statute as it is written. Linville is a member of a retirement system and is eligible to receive a retirement allowance from that system. When Linville attained TRS retirement eligibility, she was not a member of any other retirement system. She was still not a member of any other system at the time she began serving in her current PERS-eligible position. The determination of dual membership status is made at the time an individual applies for membership in a new retirement system, not *after entry* into that system. Although eligible to receive a TRS retirement benefit, Linville was not a dual member at the time she applied for PERS membership. The exception does not apply to her. Because she is eligible to receive a TRS retirement benefit, she is estopped from becoming *1274 a member of, or accruing any contractual rights in, PERS. DRS was correct in this determination.

III

¶18 The APA also provides that an agency decision may be overturned when it “is inconsistent with a rule of the agency unless the agency explains the inconsistency by stating facts and reasons to demonstrate a rational basis for inconsistency.” RCW 34.05.570(3)(h). Linville asserts that DRS has manifested multiple interpretations of the statute through its regulations, which she contends conflict with the statute and with each other. We disagree.

¶19 The first regulation she points to in support of this argument, WAC 415-113-041, clarifies when a person meets the definition of a dual member. Titled “Am I a dual member?,” it gives three criteria for dual membership that mirror the requirements of RCW 41.54.010(4):

(1) **You must be a participating member of a dual member system.** You must be a current member participant in at least one of the systems listed in WAC 415-113-030 to be a dual member. You may have established dual member status if you are or were a member participant in one of those systems on or after:

(a) July 1, 1988, for current or former members of all plans of PERS, SERS, TRS, SCERS or WSPRS;

...

(2) **You must also be a former or current member of at least one other system listed in WAC 415-113-030.**

(3) **You must not have been retired for service from a retirement system.** You are not a dual member if you have ever been retired for service from any retirement system administered by the department of retirement systems or a first class city retirement system.

WAC 415-113-041.

¶20 Linville's assertion that this regulation conflicts with the statute is premised entirely on the omission of the phrase "becomes a member" in WAC 415-113-041(1), although it is present in RCW 41.54.010(4). This assertion is not well taken. Someone who "becomes a member" at any time after a specified cutoff date (here July 1, 1988) clearly falls within the purview of WAC 415-113-041 (1). There is no conflict with the statute.

[7] ¶21 As her next averment of purported inconsistency in DRS's interpretation, Linville points to WAC 415-108-725, titled "If I have retired from another retirement system or am eligible to retire, am I excluded from participating in PERS?" This regulation was recently amended to effect a distinction in eligibility between employees taking "normal," as opposed to "early," retirement benefits. Linville asserts that the amendment shows that "[DRS]'s definition of dual membership hinges on the value of the pension, not the status of the employee." To the contrary, the amendment clarifies that RCW 41.04.270(1)(b) applies only to those persons eligible to receive a retirement allowance pursuant to what is referenced as "normal retirement," as opposed to "early retirement." The latter term entails retiring before reaching the age or acquiring the quantity of service credits necessary to receive full benefits under the statutory requirements for "normal" retirement.

¶22 The reason for this amendment is that the option of early retirement did not exist at the time of the estoppel statute's enactment, and it cannot be read to evince a fundamental change to the rule that dual membership eligibility hinges on the employee's status. The code provision is a proper interpretation of RCW 41.04.270(1)(b), in light of changes elsewhere in the statutory scheme, and is consistent with that statute's language and purpose.

¶23 In both of these instances, there is no manifest inconsistency in DRS's interpretation of the pertinent statutes. Thus, Linville's challenge fails.

IV

¶24 Linville also contends that DRS's decision to deny her enrollment was arbitrary and capricious. This contention is meritless, as DRS's decision followed the letter and intent of the statutes at issue.

¶25 Again, we review issues of law de novo, including whether an agency's decision is arbitrary and capricious. *1275 Stewart v. Dep't of Soc. & Health Servs., 162 Wash. App. 266, 273, 252 P.3d 920 (2011) (citing Wash. Indep. Tel. Ass'n v. Wash. Utils. & Transp. Comm'n, 149 Wash.2d 17, 24, 65 P.3d 319 (2003)).

[8] [9] ¶26 Pursuant to RCW 34.05.570(3)(i), a petitioner may challenge an agency's order on the ground that the order is arbitrary or capricious.

" 'Arbitrary and capricious' " refers to " 'willful and unreasoning action, taken without regard to or consideration of the facts and circumstances surrounding the action. Where there is room for two opinions, an action taken after due consideration is not arbitrary and capricious even though a reviewing court may believe it to be erroneous.' "

Pub. Util. Dist. No. 2 of Pac. County v. Comcast of Wash. IV, Inc., 184 Wash. App. 24, 45, 336 P.3d 65 (2014) (internal quotation marks omitted) (quoting Lane v. Port of Seattle, 178 Wash. App. 110, 126, 316 P.3d 1070 (2013)).

¶27 DRS did not act arbitrarily or capriciously but, rather, applied the statutes by which it is bound to the facts of Linville's application. The parties do not dispute that, without more, RCW 41.04.270(1)(b) estops Linville from attaining PERS membership due to her eligibility to receive a retirement allowance from another system. DRS considered whether Linville met the dual member exception and, relying on the plain language of the pertinent statute, properly concluded that she did not.⁵

V

¶28 To many, the DRS order may seem harsh. Harsher still may appear our decision. But DRS was correct in its determination. Any ameliorative action must come from the legislature.

WE CONCUR:

Chun, J.

Smith, J.

¶29 The superior court's judgment is reversed. The order of the Department of Retirement Systems must be reinstated.

All Citations

452 P.3d 1269, 2019 Employee Benefits Cas. 460,387

Footnotes

- 1 Civil service employees who are "elected or appointed to an elective office" may choose to become PERS members or may maintain membership in the retirement system to which they already belong. RCW 41.04.120. Had Linville opted to join PERS in 1993, she would have been allowed to do so, thus becoming a "dual member." RCW 41.54.010(4).
- 2 Linville had lost reelection in 1994 and left office at the conclusion of her first term. Shortly thereafter, she was appointed to fill a vacant seat for the same district beginning on December 12, 1995. She won each of her subsequent reelection bids until 2010.
- 3 We hereafter refer to RCW 41.04.270 as the "estoppel statute."
- 4 Linville goes on to argue that DRS has read the definition of "dual member" too narrowly, improperly defeating that which she asserts to be the purpose of the dual member exception—to make it easier for anyone to enroll in two systems. The legislative history to which Linville cites does not support her assertion of this legislative purpose. Instead, it stands for two propositions: first, that dual members are defined as *already* being members of two systems at the time they seek to avail themselves of the dual member exception, and second, that the exception was intended to allow "transfer of service from one state retirement system to another *under limited criteria*." See FINAL B. REP. ON SUBSTITUTE S.B. 5150, 50th Leg., Reg. Sess. (Wash. 1987) (emphasis added).
- 5 Had Linville joined PERS upon becoming a state representative in 1993, she would have become a dual member. At that time, she was not eligible to retire from TRS, and thus would not have been estopped from joining PERS. She elected not to do so.

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APPENDIX B

WSR 18-05-098
PROPOSED RULES
DEPARTMENT OF
RETIREMENT SYSTEMS
(Filed February 21, 2018, 11:04 a.m.)

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-20-072.

Title of Rule and Other Identifying Information: WAC 415-106-725 If I have retired from another retirement system or am eligible to retire, am I excluded from participating in PSERS?, 415-108-725 If I have retired from another retirement system or am eligible to retire, am I excluded from participating in PERS?, 415-110-725 If I have retired from another retirement system or am eligible to retire, am I excluded from participating in SERS?, and 415-112-546 If I have retired from another retirement system or am eligible to retire, am I excluded from participating in TRS?

Hearing Location(s): On March 27, 2018, at 10:00 a.m., at the Department of Retirement Systems (DRS), Conference Room 115, 6835 Capitol Boulevard S.E., Tumwater, WA 98502.

Date of Intended Adoption: March 28, 2018.

Submit Written Comments to: Jilene Siegel, DRS, P.O. Box 48380, Olympia, WA 98504-8380, email Rules@drs.wa.gov, by March 26, 2018.

Assistance for Persons with Disabilities: Contact Jilene Siegel, phone 360-664-7291, TTY 711, email Rules@drs.wa.gov, by March 23, 2017 [2018].

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To clarify that eligibility for early retirement does not make a member ineligible to establish membership in another state retirement system.

Reasons Supporting Proposal: The department believes this interpretation reflects the legislative intent to accommodate career transitions within public service. The retirement statutes prohibit membership in one retirement plan after becoming eligible to retire from another plan, to prevent members from receiving a pension while also collecting wages for public employment. When that provision was enacted, early retirement with a reduced benefit was not available. However, a member may now be eligible for an early retirement benefit that would be reduced to a small fraction of its value at full retirement age. This rule allows the member to defer retirement from the first plan, while earning benefits in another plan related to subsequent public employment.

Statutory Authority for Adoption: RCW 41.50.050 Powers, duties, and functions of director.

Statute Being Implemented: RCW 41.04.270 Public retirement systems—Members or beneficiaries estopped from becoming a member or accruing rights in any other public retirement system—Exceptions.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: DRS, governmental.

Name of Agency Personnel Responsible for Implementation: Seth Miller, DRS, P.O. Box 48380, Olympia, WA 98504, 360-664-7304.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 (5)(a)(i) does not apply to this proposed rule and is not voluntarily made applicable by the agency.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: This rule only impacts members of the state retirement systems and does not affect small businesses.

February 21, 2018

Jilene Siegel

Rules Coordinator

AMENDATORY SECTION (Amending WSR 09-19-046, filed 9/10/09, effective 10/11/09)

WAC 415-106-725 If I have retired from another retirement system or am eligible to retire, am I excluded from participating in PSERS?

(1) If you have retired from another retirement system authorized by the laws of this state, you cannot participate in PSERS membership unless:

(a) You accrued less than fifteen years of service credit in the other retirement system; or

(b) You are a LEOFF Plan 2 retiree returning to work in a PSERS eligible position and choose to participate in PSERS membership. See WAC 415-104-111.

(2) If you are eligible (~~(to retire)~~) for normal retirement from another retirement system listed in RCW 41.50.030, you cannot participate in PSERS membership unless:

(a) You accrued less than fifteen years of service credit in the other retirement system; or

(b) You are a dual member as described in RCW 41.54.010.

(3) If you are receiving a disability allowance from another retirement system listed in RCW 41.50.030, you cannot participate in PSERS membership unless you are a LEOFF Plan 2 retiree returning to work in a PSERS eligible position and choose to participate in PSERS membership. See WAC 415-104-111.

(4) Defined terms used. Definitions for the following terms used in this section are:

(a) "Membership" - RCW 41.37.020.

(b) "Service" - RCW 41.37.010.

(c) "Normal retirement" - A member is eligible for normal retirement when they have met their plan's age and/or service credit requirements for a full retirement benefit. Normal retirement does not include early retirement with a reduced benefit, or early retirement with employment restrictions prior to full retirement age. See the following plan definitions of normal retirement:

Public Employees' Retirement System (PERS) Plan 1 - RCW 41.40.180;

Public Employees' Retirement System (PERS) Plan 2 - RCW 41.40.630(1);

Public Employees' Retirement System (PERS) Plan 3 - RCW 41.40.820(1);

Public Safety Employees' Retirement System (PSERS) - RCW 41.37.210 (1) and (2);

School Employees' Retirement System (SERS) Plan 2 - RCW 41.35.420(1);

School Employees' Retirement System (SERS) Plan 3 - RCW 41.35.680(1);

Teachers' Retirement System (TRS) Plan 1 - RCW 41.32.480(1);

Teachers' Retirement System (TRS) Plan 2 - RCW 41.32.765(1);

Teachers' Retirement System (TRS) Plan 3 - RCW 41.32.875(1);

Washington State Patrol Retirement System (WSPRS) - RCW

43.43.250(2).

AMENDATORY SECTION (Amending WSR 09-19-046, filed 9/10/09, effective 10/11/09)

WAC 415-108-725 If I have retired from another retirement system or am eligible to retire, am I excluded from participating in PERS?

(1) If you have retired from another retirement system authorized by the laws of this state you cannot participate in PERS membership unless:

(a) You established membership in PERS prior to March 19, 1976;

(b) You accrued less than fifteen years of service credit in the other retirement system; or

(c) You are a LEOFF Plan 2 retiree returning to work in a PERS eligible position and choose to participate in PERS membership. See WAC 415-104-111.

(2) If you are eligible (~~(to retire)~~) for normal retirement from another retirement system listed in RCW 41.50.030, you cannot participate in PERS membership unless:

(a) You established membership in PERS prior to March 19, 1976;

(b) You accrued less than fifteen years of service credit in the other retirement system; or

(c) You are a dual member as described in RCW 41.54.010.

(3) If you are receiving a disability allowance from another retirement system listed in RCW 41.50.030, you cannot participate in PERS membership unless:

(a) You established membership in PERS prior to March 19, 1976;
or

(b) You are a LEOFF Plan 2 retiree returning to work in a PERS eligible position and choose to participate in PERS membership. See WAC 415-104-111.

(4) Defined terms used. Definitions for the following terms used in this section may be found in the sections listed.

(a) "Membership" - RCW 41.40.023.

(b) "Service" - RCW 41.40.010.

(c) "Normal retirement" - A member is eligible for normal retirement when they have met their plan's age and/or service credit requirements for a full retirement benefit. Normal retirement does not include early retirement with a reduced benefit, or early retirement with employment restrictions prior to full retirement age. See the following plan definitions of normal retirement:

Public Employees' Retirement System (PERS) Plan 1 - RCW 41.40.180;

Public Employees' Retirement System (PERS) Plan 2 - RCW 41.40.630(1);

Public Employees' Retirement System (PERS) Plan 3 - RCW 41.40.820(1);

Public Safety Employees' Retirement System (PSERS) - RCW 41.37.210 (1) and (2);

School Employees' Retirement System (SERS) Plan 2 - RCW 41.35.420(1);

School Employees' Retirement System (SERS) Plan 3 - RCW 41.35.680(1);

Teachers' Retirement System (TRS) Plan 1 - RCW 41.32.480(1);

Teachers' Retirement System (TRS) Plan 2 - RCW 41.32.765(1);

Teachers' Retirement System (TRS) Plan 3 - RCW 41.32.875(1);

Washington State Patrol Retirement System (WSPRS) - RCW 43.43.250(2).

AMENDATORY SECTION (Amending WSR 09-19-046, filed 9/10/09, effective 10/11/09)

WAC 415-110-725 If I have retired from another retirement system or am eligible to retire, am I excluded from participating in SERS?

(1) If you have retired from another retirement system authorized by the laws of this state, you cannot participate in SERS membership unless:

(a) You accrued less than fifteen years of service credit in the other retirement system; or

(b) You are a LEOFF Plan 2 retiree returning to work in a SERS eligible position and choose to participate in SERS membership. See WAC 415-104-111.

(2) If you are eligible (~~(to retire)~~) for normal retirement from another retirement system listed in RCW 41.50.030, you cannot participate in SERS membership unless:

(a) You accrued less than fifteen years of service credit in the other retirement system; or

(b) You are a dual member as described in RCW 41.54.010.

(3) If you are receiving a disability allowance from another retirement system listed in RCW 41.50.030, you cannot participate in SERS membership unless you are a LEOFF Plan 2 retiree returning to work in a SERS eligible position and choose to participate in SERS membership. See WAC 415-104-111.

(4) Defined terms used. Definitions for the following terms used in this section may be found in the sections listed.

(a) "Membership" - RCW 41.35.030.

(b) "Service" - RCW 41.35.010.

(c) "Normal retirement" - A member is eligible for normal retirement when they have met their plan's age and/or service credit requirements for a full retirement benefit. Normal retirement does not include early retirement with a reduced benefit, or early retirement with employment restrictions prior to full retirement age. See the following plan definitions of normal retirement:

Public Employees' Retirement System (PERS) Plan 1 - RCW 41.40.180;

Public Employees' Retirement System (PERS) Plan 2 - RCW 41.40.630(1);

Public Employees' Retirement System (PERS) Plan 3 - RCW 41.40.820(1);

Public Safety Employees' Retirement System (PSERS) - RCW 41.37.210 (1) and (2);

School Employees' Retirement System (SERS) Plan 2 - RCW 41.35.420(1);

School Employees' Retirement System (SERS) Plan 3 - RCW 41.35.680(1);

Teachers' Retirement System (TRS) Plan 1 - RCW 41.32.480(1);

Teachers' Retirement System (TRS) Plan 2 - RCW 41.32.765(1);

Teachers' Retirement System (TRS) Plan 3 - RCW 41.32.875(1);

Washington State Patrol Retirement System (WSPRS) - RCW

43.43.250(2).

AMENDATORY SECTION (Amending WSR 09-19-046, filed 9/10/09, effective 10/11/09)

WAC 415-112-546 If I have retired from another retirement system or am eligible to retire, am I excluded from participating in TRS?

(1) If you have retired from another retirement system authorized by the laws of this state, you cannot participate in TRS membership unless:

- (a) You established membership in TRS prior to March 19, 1976;
- (b) You accrued less than fifteen years of service credit in the other retirement system; or
- (c) You are a LEOFF Plan 2 retiree returning to work in a TRS eligible position and choose to participate in TRS membership. See WAC 415-104-111.

(2) If you are eligible (~~to retire~~) for normal retirement from another retirement system listed in RCW 41.50.030, you cannot participate in TRS membership unless:

- (a) You established membership in TRS prior to March 19, 1976;
- (b) You accrued less than fifteen years of service credit in the other retirement system; or
- (c) You are a dual member as described in RCW 41.54.010.

(3) If you are receiving a disability allowance from another retirement system listed in RCW 41.50.030, you cannot participate in TRS membership unless you are a LEOFF Plan 2 retiree returning to work in a TRS eligible position and choose to participate in TRS membership. See WAC 415-104-111.

(4) **Defined terms used.** Definitions for the following terms used in this section are:

- (a) "Membership" - RCW 41.32.032.
- (b) "Service" - RCW 41.32.010.
- (c) "Normal retirement" - A member is eligible for normal retirement when they have met their plan's age and/or service credit requirements for a full retirement benefit. Normal retirement does not include early retirement with a reduced benefit, or early retirement with employment restrictions prior to full retirement age. See the following plan definitions of normal retirement:
 - Public Employees' Retirement System (PERS) Plan 1 - RCW 41.40.180;
 - Public Employees' Retirement System (PERS) Plan 2 - RCW 41.40.630(1);
 - Public Employees' Retirement System (PERS) Plan 3 - RCW 41.40.820(1);
 - Public Safety Employees' Retirement System (PSERS) - RCW 41.37.210 (1) and (2);
 - School Employees' Retirement System (SERS) Plan 2 - RCW 41.35.420(1);
 - School Employees' Retirement System (SERS) Plan 3 - RCW 41.35.680(1);
 - Teachers' Retirement System (TRS) Plan 1 - RCW 41.32.480(1);
 - Teachers' Retirement System (TRS) Plan 2 - RCW 41.32.765(1);
 - Teachers' Retirement System (TRS) Plan 3 - RCW 41.32.875(1);

Washington State Patrol Retirement System (WSPRS) - RCW
43.43.250(2).

BURI FUNSTON MUMFORD, PLLC

January 02, 2020 - 1:55 PM

Transmittal Information

Filed with Court: Court of Appeals Division I
Appellate Court Case Number: 78582-6
Appellate Court Case Title: Hon. Kelli Linville, Res. v. State of WA. Dept. of Retirement Systems, App.
Superior Court Case Number: 17-2-01693-1

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Sender Name: Heidi Main - Email: heidi@burifunston.com

Filing on Behalf of: Philip James Buri - Email: philip@burifunston.com (Alternate Email:)

Address:
1601 F Street
Bellingham, WA, 98225
Phone: (360) 752-1500

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