

15-0281

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

FILED

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CATHY S. GATSON, CLERK  
KANAWHA COUNTY CIRCUIT COURT

CYNTHIA RINGEL-WILLIAMS,  
Petitioner,

v.

Civil Action No. 11-AA-28  
Judge Carrie Webster

STATE OF WEST VIRGINIA CONSOLIDATED  
PUBLIC RETIREMENT BOARD,  
Respondent.

**FINAL ORDER AFFIRMING WEST VIRGINIA CONSOLIDATED  
PUBLIC RETIREMENT BOARD'S ORDER**

This matter comes before the Court on Cynthia Ringel-Williams' ("Petitioner") *Petition for Appeal* from the administrative decision of the West Virginia Consolidated Public Retirement Board. After reviewing the *Petition*, briefs filed by the parties, the entire record, and the applicable legal authority, this Court **AFFIRMS** the *Final Order* of the West Virginia Consolidated Public Retirement Board.

**ISSUE**

The issue in this case is whether this Court should affirm, reverse or remand the *Final Order* of the West Virginia Consolidated Public Retirement Board ("Board") which denied Petitioner's request to participate in the Teachers Retirement System (TRS) and to convert her Teachers Defined Contribution Plan (TDC) service into TRS.

**STANDARD OF REVIEW**

The West Virginia Administrative Procedures Act governs the review of contested administrative decisions and issues by a circuit court and specifically provides that:

(g) The Court may affirm the ... decision of the agency or remand the case for further proceedings. It shall reverse, vacate or modify the ... decision of the agency if the substantial rights of the petitioner ... have been prejudiced because the administrative ... decisions are:

- (1) In violation of constitutional or statutory provisions; or
- (2) In excess of statutory authority or jurisdiction of the agency; or
- (3) Made upon unlawful procedure; or
- (4) Affected by other error of law; or
- (5) Clearly wrong in view of the reliable, probative and substantial evidence on the whole record; or
- (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

W.Va. Code § 29A-5-4. In the absence of an error of law, factual findings by an administrative agency should be given great deference, and should not be disturbed on appeal unless clearly wrong or “arbitrary and capricious.” See, e.g. Healy v. West Virginia Bd. of Medicine, 506 S.E. 2d 89, 92 (W.Va. 1998). Under the arbitrary and capricious standard, a circuit court which is reviewing the factual findings of an administrative agency must “not substitute its judgment for that of the hearing examiner.” Woo v. Putnam County Board of Education, 504 S.E. 2d 644, 646 (W.Va. 1998).

Legal issues, such as statutory and regulatory interpretation, are legal matters which are subject to *de novo* review. Id.

As to judicial review of an administrative agency’s interpretations of the statutes and regulations which it administers, and notwithstanding the general rule of *de novo* review of issues of law, the Court has held that “absent clear legislative intent to the contrary, we afford deference to a reasonable and permissible construction of [a] statute by [an administrative agency]” having policy making authority relating to the statute. See, e.g., Sniffen v. Cline, 193 W. Va. 370, 456 S. E. 2d 451 (1995).

Interpretations of statutes by administrative bodies charged with enforcing such statutes

are to be afforded great weight, and such an agency's construction of these statutes must be given substantial deference. *Sniffen*, citing *WV Department of Health v. Blankenship*, 189 W. Va. 342, 431 S. E. 2d 681 (1993); *WV Non-Intoxicating Beer Commr' v. A&H Tavern*, 181 W.Va. 364, 382 S. E. 2d 558 (1989); *Dillon v. Board of Educ.*, 171 W.Va. 631, 301 S. E. 2d 588 (1983); *Smith v. State Workmen's Comp. Comm'r.*, 159 W.Va. 108, 219 S. E. 2d 361 (1975).

This Court may not confer retirement benefits for employment where the legislature has not so authorized. See *Cain v. PERS*, 197 W.Va. 514, 476 S.E.2d 185 (1996). The rule of statutory construction to liberally construe a remedial statute to the benefit of the beneficiaries of the statute does not operate to confer a benefit where none is intended. *Id.*

#### **FINDINGS OF FACT**

The West Virginia Consolidated Public Retirement Board is a public body established pursuant to W. Va. Code §5-10D-1 to serve as the statutory administrator and fiduciary for the State's several pension plans, including the Teachers Retirement System ("TRS") established in article seven-a [§§ 18-7A-1 et seq.] chapter eighteen of the West Virginia Code and the Teachers' Defined Contribution System ("TDC") created by article seven-b [§§ 18-7B- et seq.] of said chapter. The members of the Board include the highest officials of the executive branch and a representative from each of the various plans. The Board and its members have the "highest fiduciary duty to maintain the terms of the [..TRS] trust, as spelled out in the statute." *State ex rel. Dadisman v. Moore*, 181 W. Va. 779, 384 S.E.2d 816 (1988). As a federally qualified pension plan, it is incumbent upon the Board, as part of its fiduciary duty, to ensure that the plans are administered according to their terms, for the exclusive benefit of all plan participants and beneficiaries, in order to protect and preserve the plan's qualified tax status. See IRC 401(a); W. Va. Code §5-10-3a. Such a duty encompasses the duty to maintain the integrity and credibility of

the plan which duty prohibits the Board from permitting participation in the plans by individuals who are not statutorily eligible.

Petitioner, Cynthia Ringel-Williams, began participating in the Teachers Retirement System (TRS) in January 1987 when she began regular employment with the Raleigh County Board of Education as a physical therapist. She worked three days per week until she was notified by Respondent Board by letter dated October 7, 2009, that she was ineligible for participation in either TRS or TDC. Shortly thereafter, she began working five days per week and recommenced participation in TRS.

From January 1987 - June 1992, Petitioner participated in TRS. In 1992, she enrolled in TDC and elected to "freeze" her TRS service credit. In 1999, she transferred all of her TRS service credit into TDC, effective January 2000. Then, in June 2008 after the passage of new legislation (effective July 1, 2008), she elected to transfer all of her retirement service credit from TDC into TRS. During this process, the Board audited her account and determined that she was and had been ineligible to participate in either retirement system.

Respondent Board had no knowledge that Petitioner had only been working three days per week until 2008 when the audit was performed. Although Petitioner's employer reported that she was full time but worked less than 200 days, this was not unusual in that many *eligible* employees work five days per week but only for a partial year and would have been reported in a similar manner as Petitioner by their employer.

On August 5, 2010, an administrative hearing was held. On January 3, 2011, the Board's Hearing Officer, Jack W. DeBolt, issued a *Recommended Decision* which recommended that Petitioner's request to participate in TRS be denied, but that her request to participate in TDC be approved. On January 21, 2011, the Respondent Board issued its *Final Order* adopting the

Hearing Officer's *Recommended Decision*.

Ms. Ringel-Williams, by counsel, filed an appeal to this Court.

### **CONCLUSIONS OF LAW**

West Virginia Code §18-7A-3 governs the eligibility for participation in the Teachers Retirement System (TRS) and defines the relevant terms to this issue as follows:

(18) "Nonteaching member" means any person, except a teacher member, who is **regularly employed for full-time service** by: (A) Any county board of education; (B) the State Board of Education; (C) the Higher Education Policy Commission; (D) the West Virginia Council for Community and Technical College Education; or (E) a governing board, as defined in section two, article one, chapter eighteen-b of this code: *Provided*, That any person whose employment with the Higher Education Policy Commission, the West Virginia Council for Community and Technical College Education or a governing board commences on or after July 1, 1991, is not considered a nonteaching member.

(27) "Regularly employed for full-time service" means employment in a regular position or job **throughout the employment term** regardless of the number of hours worked or the method of pay.

(11) "Employment term" means employment for **at least ten months**, a month being defined as **twenty employment days**.  
(emphasis added).

These definitions have been in effect and un-amended since 1986, the same year Petitioner began her employment. The statute is clear and unambiguous. The Hearing Officer correctly found, that at a minimum, the statute requires one to have what is commonly referred to as a 200 day contract. Prior to 2009, Petitioner only worked three days per week and therefore did not meet the statutory requirements for eligibility to participate in TRS.

The statute clearly requires an individual to work twenty (20) days per month. The State Legislature could have chosen an hour-based criterion but it did not. Even though other employees may work five days per week but less hours than Petitioner and be eligible to participate, it still does not change the clear mandates of the statute.

However, TDC and TRS are two separate and distinct retirement plans administered by the Respondent Board. TRS is administered pursuant to W.Va. Code §18-7A- *et al*, and TDC is administered pursuant to W.Va. Code §18-7A- *et al*.

Eligibility to participate in TDC is governed by W. Va. Code §18-7B-2(11)(K) which defines “member” or “employee” as “any person who is regularly employed for full-time service by any county board of education or the State Board of Education..”. West Virginia Code §18-7B-2 (16) defines “regularly employed for full-time service” as “employment in a regular position or job throughout the employment term regardless of the number of hours worked or the method of pay.” (emphasis added). Thus, unlike TRS, which requires ten months/twenty employment days for eligibility, TDC does not define “employment term.” Therefore, the Hearing Officer correctly concluded that Petitioner was eligible to participate in TDC for the years in which she was a member of TDC from July 1, 1992 - July 1, 2008.

"Administrative agencies and their executive officers are creatures of statute and delegates of the Legislature. Their power is dependent upon statutes, so that they must find within the statute warrant for the exercise of any authority which they claim. They have no general or common-law powers but only such as have been conferred upon them by law expressly or by implication." *McDaniel v. WV Division of Labor*, Syllabus Point 4, 214 W.Va. 719; 519 S.E.2d 277 (2003).

Additionally, the Court will not confer retirement benefits for employment where the legislature has not so authorized. *Cain v. PERS*, 197 W.Va. 514, 476 S.E.2d 185 (1996). The rule of statutory construction to liberally construe a remedial statute to the benefit of the beneficiaries of the statute does not operate to confer a benefit where none is intended. *Id.* at fn 9.

The Respondent Board, as an administrative agency, must faithfully carry out the mandates of the statute with respect to the retirement plans it is charged with administering. The Board is

without any power to supplant its views of fairness and equity in place of the will and intent of the Legislature. *Appalachian Regional Healthcare, Inc. v. WV Human Rights Commission*, 180 W.Va. 303, 376 S.E.2d 317 (1988) (an administrative agency's power is solely a creature of statute and thus it must derive any authority claimed from legislative enactment. It has no common law power but only that power conferred by law, expressly or by implication); *State Human Rights Commission v. Pauley*, 158 W.Va. 459, 212 S.E.2d 77 (1975) (an administrative agency can exert only such powers as those granted by the legislature and if it exceeds its statutory power its actions may be nullified by a court); 2 Am.Jur. 2d *Administrative Law* §77 (an agency cannot modify, abridge or otherwise change the statutory provisions under which it acquires authority unless the statutes expressly grant it that power).

In this case, the statute is clear and unambiguous. By having worked only three days per week from January 1986 until October 2009, Petitioner cannot meet the TRS eligibility definitions contained within West Virginia Code §18-7A-3. Not only is Petitioner barred statutorily from participating in TRS during this time, but there is also no common law theory to support her claim.

Equitable estoppel has consistently been limited in its applicability to state entities. See, e.g., *Bradley v. Williams*, 465 S.E.2d 180 (W. Va. 1995); *McFillian v. Berkeley County Planning Commission*, 438 S.E.2d 801 (W. Va. 1993); *Samsell v. State Line Development Co.*, 174 S.E.2d 318 (W. Va. 1970); *Cawley v. Board of Trustees of Firemen's Pension Fund of Beckley*, 76 S.E.2d 683 (W. Va. 1953). West Virginia's Supreme Court of Appeals recognized that "an estoppel may not be invoked against a government unit when functioning in its governmental capacity." *Samsell*, 174 S.E.2d at 325. Moreover, the Court held, "all persons must take note of the legal limitations upon [state officers'] power and authority," and that "this Court has stated many times that the state and its political subdivisions are not bound, on the basis of estoppel, by the *ultra vires*

or legally authorized acts of its officers in the performance of government functions.” *Id.* at 325, 326.

In *Samsell*, the Court recognized that equitable estoppel may, in very limited circumstances, be applied to the state “when acting in a proprietary capacity, as distinguished from a governmental capacity.” *Id.* at 326. Assuming without deciding that the state officers in question in that case were acting in a proprietary rather than governmental capacity, the Court concluded that equitable estoppel could not be properly applied under the facts of that case. In this case, the Board is clearly acting in a governmental capacity, so estoppel cannot be applied.

In *McFillian*, the Supreme Court again noted the distinction which must be made when a government entity is acting in a government rather than proprietary capacity. *McFillian*, 438 S.E.2d at 808. When acting in a governmental capacity, a state entity “is not subject to the law of equitable estoppel.” *Id.* (Emphasis supplied). The Court noted that a governmental entity acts in a governmental capacity when “the act performed is for the common benefit of the public” rather than for the special benefit or profit of the entity. *Id.*

Here, it is clear that the Board has, in its capacity as administrator of the various state retirement systems, acted in a governmental rather than proprietary capacity. The Board and its members have the “highest fiduciary duty to maintain the terms of the [..TRS] trust, as spelled out in the statute.” *State ex rel. Dadisman v. Moore*, 181 W. Va. 779, 384 S.E.2d 816 (1988). As a federally qualified pension plan, it is incumbent upon the Board, as part of its fiduciary duty, to ensure that the plan is administered according to its terms, for the exclusive benefit of all plan participants and beneficiaries, in order to protect and preserve the plan’s qualified tax status. See IRC 401(a); W. Va. Code §5-10-3a. Such a duty encompasses the duty to maintain the integrity and credibility of the plan. Consequently, and under the prevailing law of this state, the doctrine of

equitable estoppel cannot properly be applied here.

In analyzing a detrimental reliance argument, the Court in *Summers v. WV Consolidated Public Retirement Board*, 618 S.E.2d 408 (2005) affirmed Respondent Board's Hearing Officer's interpretation of *Booth v. Sims*, 456 S.E.2d 167 (W.Va. 1994) and held as follows:

“Booth principally stands for the proposition that government cannot take away contractual promise of pension benefits after an employee has relied thereon to his detriment, such detrimental reliance being presumed after ten years of service.... That which is lacking in the present circumstance, at least, is the contractual promise as enunciated by the statutes and Legislative rules... There just has never been such a promise upon which these applicants could have relied. (*Court quoting the Hearing Examiner*).

*Booth* concerned substantive amendments to existing provisions governing the state troopers' pension system.... In other words promises of future benefits were actually altered. In contrast, in the instant case the Teachers' Retirement System pension plan never contained [such] a provision. Thus, unlike in *Booth*, the Teachers' Retirement System had not made a promise on which the teachers relied. Therefore, the detrimental reliance principle set forth in *Booth* is not applicable to the present facts.” *Id.* at p. 413.

*Booth* does not confer constitutionally protected property rights where none statutorily existed. The issue in *Booth* was whether the legislature could amend an active employee's pension plan without unconstitutionally impairing the obligations of contract. *Id.* at 177. The Court's analysis centered on the concept that when a legislature creates a pension system and an employee for a number of years relies upon that “promise” of deferred payment, a contract is formed and the employee acquires a constitutionally protected property interest.

The statute in essence becomes the contract between the state and the potential employee. In this case, the legislature never promised the Petitioner anything. To the contrary, the statute unequivocally states “at least ten months, a month being defined as twenty employment days”. W. Va. §18-7A-3(11).

Petitioner in this case does not have a statutory right to her request. Respondent Board cannot give Petitioner a statutory right that does not exist, and Petitioner cannot detrimentally rely upon a right that never existed.

“Administrative agencies are generally clothed with the power to construe the law as a necessary precedent to administrative action. Even so, it is axiomatic that an administrative agency has no power to declare a statute void or otherwise unenforceable. An agency cannot modify, abridge or otherwise change the statutory provisions under which it acquires authority unless the statutes expressly grant it that power. While agencies are entitled to a certain amount of hegemony over the statutes they are entrusted to administer, agencies may not go to far afield of the letter of the law even if they perceive they are furthering the spirit of the law. Although an administrative agency has the authority and duty to determine its own limits of statutory authority, it is the function of the judiciary to finally decide the limits of the authority of the agency.” See 2 Am Jur2d, *Administrative Law* §77 (emphasis supplied and footnotes omitted).

Additionally, permitting the Petitioner to participate in a retirement plan in which she is not statutorily eligible to participate in is contrary to the explicit mandate of the statute and violates the Board’s fiduciary duty to all participants in the retirement plan.

Regardless of whether Respondent Board’s staff made mistakes or failed to inform Petitioner, the Respondent Board is not bound by the mistakes of its employees.

The Court in *Samsell v. State Line Development Co.*, 174 S.E.2d 318 (W. Va. 1970) held that “a state is not bound by the unauthorized or illegal acts of its officers .....; and all persons who deal with such officers do so at their peril, in all matters wherein such officers exceed their legitimate powers.” *Syllabus Point 1.*

With respect to the principles of estoppel the Court issued the following ruling:

“Principles relating to persons acting or assuming to act on behalf of the state are summarized in *Cunningham v. The County Court of Wood County*, 148 W.Va. 303, 309-10, 134 S.E.2d 725, 729-30; as follows:

“The general rule is that an estoppel may not be invoked against a governmental unit when functioning in its governmental capacity. 31 C.J.S., Estoppel, Sections 138-142, pages 675-719; Anno., 1 A.L.R.2d 338.”

“A governmental unit is not estopped to deny the validity of *ultra vires* acts of its officers. 31 C.J.S., Estoppel Section 143, page 719. See also 19 Am. Jur., Estoppel, Section 167, page 819; 7 M.J. Estoppel, Section 7, page 246. A state or one of its political subdivisions is not bound by the legally unauthorized acts of its officers; and all persons must take note of the legal limitations upon their power and authority.(emphasis added) *Schippa v. West Virginia Liquor Control Commission; Armstrong Products Corporation v. Martin; State v. Conley; The City of Beckley v. Wolford et. al.; Coberly v. Gainer; State v. Chilton, ..... [full citations omitted]*.” Id. at p. 329.

In the present case, even though the Petitioner was not fully informed by Board staff, the Petitioner is charged with the knowledge of the law as it exists in the statute and the Board cannot be estopped from carrying out the clear mandates of that statute despite any misrepresentations by its staff.

The Court in *Samsell* further held that the “acts of a private agent may bind the principal where they are within the apparent scope of his authority; but not so with a public officer, as the State is bound only by authority actually vested in the officer, and his powers are limited and defined by its laws.” *Syllabus Point 4*.

Accordingly, for the reasons stated above, the Court FINDS and CONCLUDES that the decision of the ALJ and the Board were correct and should be affirmed.

### RULING

The Court FINDS that from January 1986 to October 2009, Petitioner was not eligible to participate in TRS based upon the clear and unambiguous language of W. Va. Code §18-7A-3;

however, she was eligible to participate in TDC from July 1, 1992- July 1, 2008. The Court further FINDS that the Respondent Board correctly applied the law and its administrative decision did not violate provisions set forth in *West Virginia Code* §29A-5-4.

WHEREFORE, it is hereby **ORDERED** that the *Final Order* of the Respondent West Virginia Consolidated Public Retirement Board is **AFFIRMED**. The Court notes counsel for Petitioner's objections and exceptions to this Order.

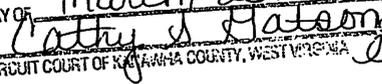
The Clerk of this Court is directed to send copies of this Order to counsel of record.

ENTERED this 27<sup>th</sup> day of February, 2015.

  
JUDGE CARRIE WEBSTER  
Thirteenth Judicial Circuit

Prepared By:

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STATE OF WEST VIRGINIA  
COUNTY OF KANAWHA, SS  
I, CATHY S. GATSON, CLERK OF CIRCUIT COURT OF SAID COUNTY  
AND IN SAID STATE, DO HEREBY CERTIFY THAT THE FOREGOING  
IS A TRUE COPY FROM THE RECORDS OF SAID COURT.  
GIVEN UNDER MY HAND AND SEAL OF SAID COURT THIS 2  
DAY OF March, 2015  
 CLERK  
CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA lt