

**To: J.C. Keeney, Acting Local Board Chair
Corrections Officer Retirement Plan**

August 1, 2001

**Re: Retirees in the Corrections Officer
Retirement Plan
I01-018 (R00-056)**

Questions Presented

Your predecessor asked whether: (1) retired correctional officers who return to work in designated positions covered by the Corrections Officer Retirement Plan (CORP) are required to participate in the Arizona State Retirement System (ASRS); and (2) retired correctional officers who return to work in CORP-designated positions may elect not to participate in any retirement system.

Summary Answer

Based on the 2001 amendments to the statutes governing the ASRS, retired correctional officers who return to work in CORP-designated positions must participate in ASRS.

Background

For the most part, State employees are members of the ASRS. See A.R.S. § 38-711 to -794. The Legislature has also established other retirement programs for particular groups of State officers or employees, such as the Elected Officials Retirement Plan, A.R.S. §§ 38-801 to -820, the Public Safety Personnel Retirement System, A.R.S. §§ 38-841 to -859, and the CORP, A.R.S. §§ 38-881 to -908.

CORP, a state retirement system for employees who work in the field of corrections, was created by the Legislature in 1986 in response to the high turnover rate in corrections personnel. See *Corrections Officers Retirement Plan: Minutes of Meeting on H.B. 2310 Before the House Comm. on Government Operations*, 37th Leg., 2nd Reg. Sess. 3 (March 11, 1986). See 1986 Ariz. Sess. Laws ch. 325 (codified at Arizona Revised Statutes §§ 38-881 through -903). "[CORP] was established in order to provide a uniform, consistent and equitable statewide program for . . . eligible corrections officers." A.R.S. § 38-900.01(B).

Employees are eligible to participate in CORP if they are employed in designated positions within correctional facilities. A.R.S. § 38-881(7). A "designated position" under CORP includes county, city, or town detention officers, certain employees of county sheriffs, and certain employees of the Department of Corrections and the Department of Juvenile Corrections. *Id.* The system also establishes local boards charged with administering CORP. A.R.S. § 38-893. Subject to some limitations, the local boards determine eligibility, service credits, and benefits under CORP. A.R.S. § 38-893(D)(1).

Analysis

Except in certain circumstances set forth in statute, membership in ASRS is mandatory for all employees or officers of the State. A.R.S. § 38-727(1). State employees participating in CORP are among those exempt from ASRS participation. The Legislature made this exemption explicit in an amendment approved in the 2001 regular session which provides that membership in ASRS is not mandatory for "any employee or officer who is eligible to participate and who participates in the Elected Officials' Retirement Plan. . . , the Public Safety Personnel Retirement System. . . , or the Corrections Officer Retirement Plan." 2001 Ariz. Sess. Laws ch. 136, § 7 (codified at A.R.S. § 38-727(1)(e)).⁽¹⁾

Your questions are limited to CORP members who have retired and who have chosen to return to work in CORP-designated positions. In that situation, the statutes expressly prohibit the CORP retiree from contributing to the CORP fund or from accruing credited service while working in a CORP-designated position. A.R.S. § 38-884(J). In addition, the retiree's CORP pension is suspended "until the retired member again ceases to be an employee [in a CORP designated position]." A.R.S. § 38-884(J)(1). Thus, the retired CORP member who returns to work in a CORP-designated position is not eligible to participate in CORP while he or she is so employed.

Consequently, although State employees eligible for and participating in CORP are exempt from ASRS, CORP retirees who return to work in CORP-designated positions are not. See A.R.S. § 38-727(1)(e). Because they are not eligible to participate in CORP and are not otherwise exempt from the requirement that State employees participate in the ASRS, retired CORP members returning to work in CORP-designated positions must participate in ASRS. See A.R.S. § 38-727(1). They are not authorized to participate in any other retirement system. In addition, they are not authorized to elect not to participate in ASRS. See *id.*

Conclusion

Retired correctional officers who return to work in CORP-designated positions are required to participate in ASRS.

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1. 2001 Ariz. Sess. Laws ch. 136 is effective August 9, 2001, the general effective date for legislation approved in the 45th Legislature's first regular session. The analysis in this Opinion is based on the law amended by the Legislature in 2001.

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