

FIRST REPORT OF THE GOVERNOR'S
COMMISSION TO STUDY JUDICIAL
SYSTEM PENSIONS

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FIRST REPORT
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JANUARY 14, 1976

Prior to July 1, 1969, State judges were the beneficiaries of a non-contributory pension plan which permitted supplementation by political subdivisions. County and Baltimore City judges in the courts of limited jurisdiction were involved in a variety of local retirement systems, if they received any pension benefits at all.

Chapter 562, Acts of 1969, established a contributory pension system which would be mandatory for every judge of the Court of Appeals, Court of Special Appeals, Supreme Bench of Baltimore City, or circuit courts of the counties who took office on or after that date. Judges in office on July 1, 1969 were allowed to elect between the contributory and non-contributory systems. Consequently, two pension systems for State judges existed after June 30, 1969, in addition to the various local systems for judges of the courts of limited jurisdiction.

The creation of the District Court in 1971 almost doubled the number of judges in the State system, while at the same time abolishing the former local courts of limited jurisdiction. However, the dual State pension system still existed since some judges who were in office on July 1, 1969 remained in the non-contributory plan.

Chapter 483, Acts of 1974, made some improvements in pension benefits available to contributory plan judges. But its main purpose was to induce all judges not then in the contributory plan to enter that plan. In this, the bill was highly successful. By December 31, 1974, all active State judges were under the contributory plan. Only a few retired judges and the spouses of some deceased judges continued to receive benefits under the non-contributory plan. Thus, the judicial pension system has been brought to a stage permitting rational future planning and management, as well as appropriate comparison with judicial pension systems in other states, as well as with other public employee retirement systems in Maryland.

I. ESTABLISHMENT OF THE COMMISSION

In light of this history, Resolution No. 8 of the 1975 General Assembly requested the Governor to appoint a Commission to study the Judicial Pension System and to submit its report in 1976. The Resolution identified three specific areas for study:

1. Funding of the system (financial soundness);
2. Effect of expansion of the judiciary on the system; and
3. Consideration of improvements in benefits under the system.

In response to this legislative request, Governor Mandel appointed eight persons to the Commission. They included:

Mr. William Koeskey, Chairman
Retired IRS agent - Baltimore
William W. Cahill, Jr., Esq.
Lawyer - Baltimore
Asst. Secretary Christ G. Christis
State Department of Personnel - Baltimore
Mr. Willard Hackerman
Businessman - Pikesville
Delegate John R. Hargreaves
Chairman - House Appropriations Committee-
Denton
Judge Thomas Hunter Lowe
Court of Special Appeals - Pot Pie
Senator Roy N. Staten
Chairman, Senate Budget and Taxation
Committees - Dundalk

State Court Administrator William H. Adkins, II, Easton, has acted as secretary to the Commission.

II. GENERAL POLICY ADOPTED BY THE COMMISSION

As directed by Resolution No. 8, the Commission has sought and obtained comments about the judicial pension system from judges, lawyers, bar associations, and others. It has studied these comments, suggestions generated by Commission members themselves, and has considered certain problems concerning IRS treatment of the judicial pension system.

At its initial meeting on October 2, 1975, the Commission was made aware of the existence of a legislative committee, chaired by Senator James Clark of the Senate Finance Committee, which legislative committee is studying in depth numerous aspects of the teachers', state employees', and state police retirement systems. It became apparent that the work of the Clark Committee will shed a good deal of light on some aspects of the judicial system, that the Clark Committee will not complete its work prior to the 1976 General Assembly, and that the proposals of this Commission should be made in light of data obtained by the Clark Committee and its consultant, and should, where feasible, coincide with fundamental policy adopted by the Clark Committee.

Accordingly, the Commission decided not to submit to the 1976 General Assembly any major substantive proposal respecting judicial pensions. It intends to submit any such proposals to the 1977 General Assembly, after it has the full benefit of the work of the Clark Committee in the general field of State pension systems.

Also, the matter of IRS treatment of the judicial pension system is now in the hands of counsel and the Commission will have no recommendations in this area until further developments have been reported to it.

Despite its general decision to postpone major proposals, the Commission does believe that there are several recommendations it can make to the 1976 General Assembly in order to eliminate some clear inequities in the judicial pension system, and to make that system more consistent with other state retirement plans. These proposals will be discussed in detail below.

III. RECOMMENDATIONS FOR 1976

A. Continued existence of the Commission *MIN 89*

To permit it to continue its work in co-ordination with the Clark Committee, the Commission recommends adoption of a joint resolution which would continue it in existence through 1976, and would require it to submit its final report prior to the 1977 General Assembly.

B. Benefits for surviving minor children of deceased judge

Under the present law, the surviving spouse of a deceased judge is entitled to receive benefits equivalent to one-half the pension the deceased judge would have received had he lived

and been paid a retirement benefit. The surviving spouse's benefit continues until death or remarriage of the spouse; Art. 73B, §56(e). If the spouse dies or remarries, payments cease "and no person has any further rights arising from the judge's service"; Art. 73B, §56(g). The only mitigation of this potentially harsh rule is that if a judge dies in active service, leaving no spouse surviving, his contributions to the pension fund are paid to his estate; Art. 73B, §57(j).

Thus, if a judge and his spouse die simultaneously in an automobile accident, leaving surviving minor children, the children receive no protection, except to the extent they may be distributees of pension contributions remitted to the judge's estate. If a retired judge, who is receiving a pension, dies with his spouse in a common disaster, surviving minor children receive no benefits whatsoever by virtue of the pension system.

Given the influx of younger judges into the court system, the likelihood of surviving minor children who need some protection is an increasing one, and a matter of legitimate concern for judges. Statutes pertaining to other State retirement systems permit provisions for surviving children under certain circumstances; see, e.g. Art. 73B, §11(9) (a), 11(11).

Therefore, the Commission recommends the adoption of legislation that would permit surviving minor children of a judge to receive the one-half pension now provided for the surviving spouse, if there is no surviving spouse or if the surviving spouse dies or remarries while one or more of the judge's children are minors. These benefits would end when the youngest child attains majority.

A bill to accomplish this purpose is attached as Exhibit 1.

C. Minimum Disability Benefits MB 1356

A judge who has served a relatively short period of time, and who then suffers a physical or psychiatric disability making his continuing service difficult may suffer severe financial strain if he applies for and receives disability retirement. The economic effect on a potential surviving spouse, if the judge retires and then dies, is even more drastic. Thus, the judge is under strong pressure to remain on the bench, even though he may be unable to perform his duties effectively. In such a situation, it is in the public interest to persuade the judge to retire, and he might be compelled to do so by the Commission on Judicial Disabilities, but once again, financial problems may inhibit forceful action.

The General Assembly recognized this problem in 1975, and by Chapter 820 of the Laws of that year, added §56(i) to Art. 73B, providing a minimum disability pension of one-third of the judge's salary, regardless of length of service. This general approach was consistent with the special treatment of disability retirement under other State pension laws; see, e.g. Art. 73B, §11(5) and (6). However, the 1975 provision was made applicable to judges retiring due to disability from July 1, 1975 through July 1, 1977.

The Commission believes that the concept of minimum disability benefits should be made a permanent part of the judicial pension system. A bill to accomplish this is attached as Exhibit 2.

D. Modification of Prohibition Against Post-retirement Public Employment HB 1458

Art. 73B, §56(d) provides that "a former judge who accepts a municipal, county, State, or federal salaried public office or employment may not be paid a pension. . . while he remains in the public office or employment."

The effect of this provision is far-reaching. For example, it effectively prevents a retired judge from serving as a compensated member of a municipal or county council, because of the potential loss of income.

Whatever the value of such restrictions under a non-contributory pension system, the general value of permitting able and experienced people to engage in public employment would seem to outweigh the usefulness of a total prohibition, when a contributory pension system is involved.

As a general proposition, it appears that the non-judicial State employee who retires is not prevented from accepting federal, municipal, or county employment. He may accept "temporary" State employment subject (with some exceptions) to a ceiling on combined pension and salary income; Art. 73B §11(14).

The Commission is aware of the problem of "double-dipping," but nevertheless believes that a retired judge should be permitted to accept public office or employment, provided that the combined salary and pension do not exceed the total judicial salary the judge was receiving while in active judicial service. This is a somewhat more stringent rule than that applicable to non-judicial retired employees, but appears to be a reasonable compromise between unlimited "double-dipping" and the beneficial policy of permitting retired judges to be available for at least limited public office or employment.

A bill to accomplish this objective is attached as Exhibit 3.

E. Abolition of Prohibition Against Practice of Law

11.5 1457

Under Art. 73B, §56(c), a judge "who retires and accepts the pension provided by this subtitle may not, thereafter, engage in the practice of law for compensation" unless he is at least 70 years old, retired involuntarily, and receives less than \$3,500 annually in pension.

In former years, the prohibition against the practice of law (which apparently first appeared in somewhat different form in Ch. 639, Laws of 1955) provided in effect, that a judge who retired, accepted no pension, could practice law and receive his pension after he stopped practicing law; see Art. 26, §49(e) in the 1973 Replacement volume of the Code.

Once again, loss of pension in exchange for compensation for practice of law might make some sense under a non-contributory system, although even that point is debatable. But it seems grossly unfair under a contributory system.

Moreover, the restriction seems in general inequitable, and designed at least in part as an undesirable restriction on competition. Among all retired State employees, only judges are singled out in this fashion. A State doctor who retires may practice medicine privately, without loss of pension. A State lawyer who retires may practice law privately without loss of pension. A State typist who retires may be employed privately as a typist without loss of pension. Only the judge is faced with the Hobson's choice of deciding between doing what he is best qualified to do and loss of his retirement benefits.

At least one court has found such a provision to be an unconstitutional denial of equal protection of the laws; In Re the Florida Bar - Code of Judicial Conduct; Fla. 281 So. 2d. 21 (1973). Unconstitutional or not, the Commission urges the elimination of this unfair restriction. A bill to accomplish this is attached as Exhibit 4.

IV. CONCLUSIONS

The Commission views the four preceding legislative proposals as important but relatively technical adjustments of omissions or inequities in the judicial pension system. No proposal is basically inconsistent with provisions of the general retirement plan for non-judicial employees. It believes that only minor fiscal impact is involved.

If, as is proposed, the Commission is continued in existence through 1977, it believes it can accomplish the more substantive portion of the mandate contained in Resolution No. 8, while at the same time co-ordinating its work with that of the Clark Committee.

Respectfully submitted,

Governor's Commission on Judicial System Pensions

James C. Alban	John R. Hargreaves
William W. Cahill, Jr., Esq.	Thomas Hunter Lowe
Christ G. Christis	Roy N. Staten
Willard Hackerman	William Koesky, Chairman

A BILL ENTITLED

HB 1456

AN ACT concerning

Judge's Retirement System - Survivor Benefits

FOR the purpose of providing survivor benefits to minor children of a deceased judge if there be no surviving spouse and clarifying the language.

BY repealing and re-enacting, with amendments,

Article 73 - B - Pensions

Section 56 (e), 56 (g) and 57 (j)

Annotated Code of Maryland

(1970 Replacement Volume and 1975 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, that section 56 (e), 56 (g), and 57 (j) of Article 73 B - Pensions, of the Annotated Code of Maryland (1970 Replacement Volume and 1975 Supplement) be and they are repealed and re-enacted, with amendments, to read as follows:

ARTICLE 73 B - Pensions

56.

(e) Upon the death of a Judge or former Judge at any time, [his spouse shall be paid one-half of the pension that would be payable from time to time to the judge if he were living and eligible to receive a pension.]:

(1) THERE SHALL BE PAID TO THE SURVIVING SPOUSE ONE-HALF OF THE PENSION THAT WOULD BE PAYABLE FROM TIME TO TIME TO THE JUDGE IF HE WERE LIVING AND ELIGIBLE TO RECEIVE A PENSION; OR

(2) IF THERE IS NO SURVIVING SPOUSE, OR IF THE SURVIVING SPOUSE DIES OR REMARRIES BEFORE THE YOUNGEST CHILD OF THE DECEASED

JUDGE HAS ATTAINED THE AGE OF 18, THEN THE PENSION DETERMINED IN SUBSECTION (e) (i) ABOVE SHALL BE PAID TO THE CHILD OR CHILDREN UNDER THAT AGE, UNTIL EVERY CHILD DIES OR ATTAINS AGE 18.

(g) If a former judge who is receiving a pension dies and leaves no spouse, or if a spouse who is receiving a pension dies or remarries, OR IF THE YOUNGEST CHILD OF THE DECEASED JUDGE ATTAINS THE AGE OF 18, payments under either plan shall cease, and no person has any further rights arising from the judge's services EXCEPT AS PROVIDED IN SECTION 57 (j).

57.

(j) If a judge's service is terminated by death, and he leaves [no] NEITHER spouse NOR SURVIVING MINOR CHILDREN, his accumulated contributions to the fund, plus interest at four percent from the date of payment, shall be paid to his estate.

SECTION 2. BE IT FURTHER ENACTED, that this Act is to take effect July 1, 1976.

A BILL ENTITLED

1978 135-6

AN ACT concerning

Judge's Retirement System - Disability Benefit

FOR the purpose of providing a minimum benefit to Judges retired on disability.

BY Repealing

Article 73 B - Pensions

Section 56 (i)

Annotated Code of Maryland

(1970 Replacement Volume and 1975 Supplement)

BY Repealing and re-enacting, with amendments,

Article 73B - Pensions

Sections 57 (h)

Annotated Code of Maryland

(1970 Replacement Volume and 1975 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, that Section 56 (i) of Article 73 B - Pensions, of the Annotated Code of Maryland (1970 Replacement Volume and 1975 Supplement) be and it is hereby repealed:

ARTICLE 73B - Pensions

56.

[(i) A Judge who retires due to disability during period July 1, 1975, through July 1, 1957, shall be entitled to a pension equivalent to one-third of the annual salary for judges of that court in effect as of the date of retirement.]

SECTION 2. AND BE IT FURTHER ENACTED, that Section 57(h) of Article 73 B - Pensions, of the Annotated Code of Maryland (1970 Replacement Volume and 1975 Supplement) be and it is hereby repealed and re-enacted, with amendments, to read as follows:

ARTICLE 73 B - Pensions

57.

(h) The amount of the pension payable to a former judge in each fiscal year is two-thirds of the salary payable in that fiscal year to a judge holding the same or same level judicial position as that in which the former judge served at the time of the termination of his service, provided that the former judge served 16 years or more. If the period of active judicial service of the former judge was less than 16 years, the amount of pension shall be less, in the proportion that the period of this service bears to 16 years. IN NO EVENT SHALL THE PENSION PAYABLE TO A FORMER JUDGE FOR REASON OF DISABILITY BE LESS THAN ONE-THIRD OF HIS OR HER SALARY.

SECTION 3. AND BE IT FURTHER ENACTED, that this Act shall take effect July 1, 1976.

A BILL ENTITLED

HB 1458

AN ACT concerning

Judge's Retirement System - Employment of Former Judges
FOR the purpose of permitting former Judges rights of employment
in public positions similar to those that retired employees
and teachers presently enjoy.

BY repealing and re-enacting, with amendments,

Article 73B - Pensions

Section 56 (d)

Annotated Code of Maryland

(1970 Replacement Volume and 1975 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, that
Section 56(d) of Article 73B - Pensions, of the Annotated Code
of Maryland (1970 Replacement Volume and 1975 Supplement) be
and it is hereby repealed and re-enacted, with amendments, to
read as follows:

ARTICLE 73B - Pensions

56.

(d) [A former judge who accepts a municipal, county, state,
or federal salaried public office or employment may not be paid a
pension under this subtitle while he remains in the public office
or employment.]

A FORMER JUDGE MAY ACCEPT EMPLOYMENT IN WHICH ALL OR PART OF
THE COMPENSATION THEREOF COMES FROM MUNICIPAL, COUNTY, STATE, OR
FEDERAL FUNDS. PROVIDED HE IMMEDIATELY NOTIFIES THE BOARD OF TRUSTEES
OF THE EMPLOYEES RETIREMENT SYSTEM OF HIS INTENTION TO ACCEPT SAID

EMPLOYMENT AND SPECIFIES THE COMPENSATION TO BE RECEIVED THEREFOR AND FURTHER PROVIDED THE ANNUAL RETIREMENT ALLOWANCE RECEIVABLE BY THE FORMER JUDGE PLUS THE ANNUAL REMUNERATION FOR THE POSITION SHALL NOT EXCEED IN AMOUNT THE COMPENSATION UPON WHICH SAID RETIREMENT ALLOWANCE IS BASED. DURING ANY PERIOD IN WHICH THE TOTAL OF THE ANNUAL RETIREMENT ALLOWANCE AND THE ANNUAL REMUNERATION FOR THE POSITION IN FACT EXCEEDS THE COMPENSATION UPON WHICH THE RETIREMENT ALLOWANCE IS BASED, THE RETIREMENT ALLOWANCE SHALL BE REDUCED BY THAT AMOUNT NECESSARY TO BRING THE FORMER JUDGE'S TOTAL COMPENSATION WITHIN THE LIMIT SPECIFIED IN THIS SUBSECTION.

SECTION 2. AND BE IT FURTHER ENACTED, that this Act shall take effect July 1, 1976.

A BILL ENTITLED

AN ACT concerning

Judge's Retirement System - Engaging in the practice of Law
For the purpose of permitting a retired Judge to practice Law and
to adjust the lettering of certain subsections of Section 56.

BY Repealing,

Article 73 B - Pensions

Section 56 (c)

Annotated Code of Maryland

(1970 Replacement Volume and 1975 Supplement)

BY Relettering as appropriate,

Article 73 B - Pensions

Section 56 (d), (e), (f), (g), (h), and (i)

Annotated Code of Maryland

(1970 Replacement Volume and 1975 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, that
Section 56 (c) of Article 73 B - Pensions of the Annotated Code
of Maryland (1970 Replacement Volume and 1975 Supplement) be
and it is hereby repealed.

56.

[(c) A judge who retires and accepts the pension provided by this
subtitle may not, thereafter, engage in the practice of law
for compensation; but this prohibition does not apply to a
former judge who has attained the age of 70 years and received less
than \$3,500 per annum in pension as provided by this subtitle, and
who has not voluntarily retired.]

SECTION 2. AND BE IT FURTHER ENACTED that subsections (d), (e), (f), (g), (h), and (i) of Article 73 B - Pensions, of the Annotated Code of Maryland (1970 Replacement Volume and 1975 Supplement) be and each is hereby relettered as subsections (c), (d), (e), (f), (g), and (h).

SECTION 3. AND BE IF FURTHER ENACTED that this Act is to take effect July 1, 1976.