

Liability **in Certain Situations** and Dual Membership

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June 17, 2021



Liability in Certain Situations



Introduction

- **Liability** – Will introduce several different scenarios to show which system, if any, is liable for the associated service and also in some cases how much to pay
- **Dual Membership** – Will discuss the current state of the dual member provisions and how they have evolved.
- When a city or town is mentioned, it should be understood that there is a corresponding retirement system that falls under the provisions of Chapter 32.
- Special thanks!

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NOTES:

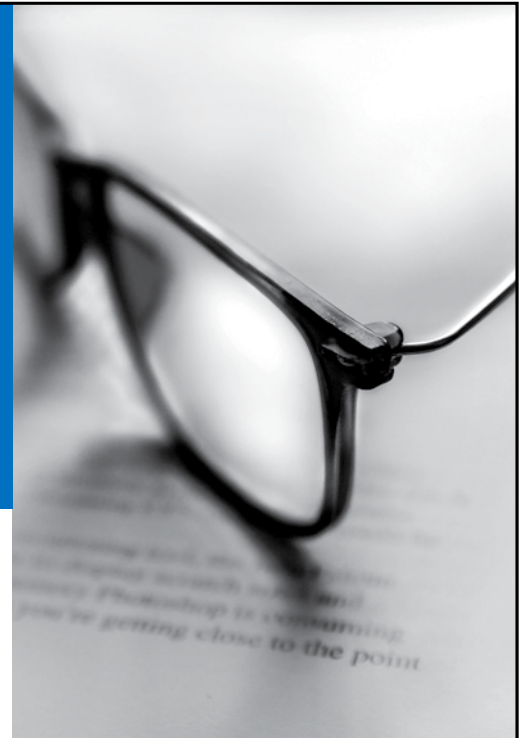
Liability

- This topic ties in with “dual members” in one respect because the issue of liability only arises when an individual has worked in more than one system.
- This runs the gamut between people who have simply worked for 17 years in one place and 13 years in another, to those who have purchased time under various provisions of Chapter 32, including, but not limited to, Sections 3(5), 4(1)(h) and 4(2)(c).
- The following scenarios are meant to illustrate the various ways that one system or another are liable for service under Chapter 32.

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Scenario 1 – (An Easy One to Start)

- Randy Griffith begins work in the Town of Juneberry. He works his entire career in Juneberry and retires upon attaining age 65.
 - Who is liable for this service?



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NOTES:



Scenario 1

- A. Aprilberry Retirement System
- B. Mayberry Retirement System
- C. Juneberry Retirement System
- D. Julyberry Retirement System

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Scenario 2

- Randy Griffith begins working as a call firefighter (FF) in the Town of Juneberry. After 5 years, he becomes a full-time FF in Juneberry. He retires from the Town of Juneberry upon attaining age 65.
 - Is he allowed credit for the time he served as a call FF?
 - If so, who is liable for this service?



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NOTES:



Scenario 2

- A. Yes. Marchberry under Section 3(5)
- B. Yes. Mayberry under Section 4(1)(c)
- C. Yes. Juneberry under Section 4(2)(b)
- D. No.

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Section 4(2)(b)

- ...provided, further, that the board shall credit as full-time service not to exceed a maximum of five years that period of time during which a reserve or permanent-intermittent police officer or a reserve, permanent-intermittent or call fire fighter was on his respective list and was eligible for assignment to duty subsequent to his appointment; and provided, further, that such service as a permanent-intermittent or call fire fighter shall be credited only if such permanent-intermittent or call fire fighter was later appointed as a permanent member of the fire department.
(Emphasis supplied.)

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NOTES:



Scenario 3

- Randy Griffith begins working as a call firefighter (FF) in the Town of Juneberry. After 5 years, he becomes a full-time FF in Juneberry. After 5 more years, he gets a job in the Town of Fancy Gap. He transfers his membership. He retires from Fancy Gap upon attaining age 65.
 - Is he allowed credit for the time he served as a call FF?
 - If so, who is liable for this service?

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Scenario 3

- A. Yes. Mayberry under Section 3(5)
- B. Yes. Juneberry under Section 4(2)(b)
- C. Yes. Fancy Gap under Section 4(2)(b)
- D. No.

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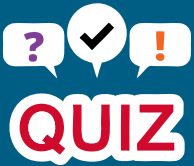
NOTES:

Scenario 4

- Randy Griffith begins working as a call firefighter (FF) in the Town of Juneberry. After 5 years, he becomes a full-time FF in the Town of Fancy Gap. The Town of Juneberry accepted the local option in Section 4(2)(b½). He retires from Fancy Gap upon attaining age 65.
 - Is he allowed credit for the time he served as a call FF?
 - If so, who is liable for this service?



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Scenario 4

- A. Yes. Juneberry under Section 4(2)(b½)
- B. Yes. Fancy Gap under Section 4(2)(b)
- C. Yes. Fancy Gap under Section 4(2)(b½)
- D. No.

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NOTES:

Section 4(2)(b½)

- In any city, town, or fire district, which accepts the provisions of this paragraph, service as a permanent-intermittent or call firefighter shall be credited as full-time service as provided in paragraph (b), except that credit for such service shall not be conditioned upon the appointment of said permanent-intermittent or call firefighter as a permanent member of the fire department. (*Emphasis supplied.*)

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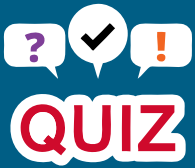
Scenario 5

- Randy Griffith begins working as a call firefighter (FF) in the Town of Juneberry. After 5 years, he becomes a full-time FF in the Town of Fancy Gap. The Town of Juneberry did not accept the local option in Section 4(2)(b½) but the Town of Fancy Gap did. He retires from Fancy Gap upon attaining age 65.
 - Is he allowed credit for the time he served as a call FF?
 - If so, who is liable for this service?



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NOTES:



Scenario 5

- A. Yes. Juneberry under Section 4(2)(b½)
- B. Yes. Fancy Gap under Section 4(2)(b)
- C. Yes. Fancy Gap under Section 4(2)(b½)
- D. No.

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Scenario 6

- Randy Griffith begins working as a call firefighter (FF) in the Town of Juneberry. After 5 years, he becomes a full-time FF in the Town of Fancy Gap. Neither town accepted the local option in Section 4(2)(b½). He retires from Fancy Gap upon attaining age 65.
 - Is he allowed credit for the time he served as a call FF?
 - If so, who is liable for this service?

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NOTES:



Scenario 6

- A. Yes. Juneberry under Section 4(2)(b)
- B. Yes. Fancy Gap under Section 3(5)
- C. Yes. Fancy Gap under Section 4(2)(b)
- D. No.

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Section 3(5)

- ...[O]r any member of any system who rendered service in any governmental unit other than that by which he is presently employed, in a temporary, provisional, or substitute position and who was excluded from membership by the rules of any board, may, before the date any retirement allowance becomes effective for him, pay into the annuity savings fund of the system in one sum, or in instalments, upon such terms as the board may prescribe, an amount equal to that which would have been withheld as regular deductions from his regular compensation for such previous period, or most recent portion thereof, as he may elect, in no event aggregating more than twenty years, had such service been rendered in the governmental unit by which he is presently employed and in a position subject to the provisions of this chapter, or to corresponding provisions of earlier laws. (*Emphases supplied.*)

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NOTES:

Scenario 7

- Mandy Griffith begins working as a reserve police officer (PO) in the Town of Juneberry. After 5 years, she becomes a full-time PO in the Town of Fancy Gap. Both the Towns of Juneberry and Fancy Gap accepted the local option in Section 4(2)(b½). She retires from Fancy Gap upon attaining age 65.
 - Is she allowed credit for the time she served as a reserve PO?
 - If so, who is liable for this service?



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Scenario 7

- A. Yes. Juneberry under Section 4(2)(b)
- B. Yes. Juneberry under Section 4(2)(b½)
- C. Yes. Fancy Gap under Section 4(2)(b)
- D. Yes. Fancy Gap under Section 4(2)(b½)
- E. No.

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NOTES:

Section 4(2)(b) – Again!

- ...provided, further, that the board shall credit as full-time service not to exceed a maximum of five years that period of time during which a reserve or permanent-intermittent police officer or a reserve, permanent-intermittent or call fire fighter was on his respective list and was eligible for assignment to duty subsequent to his appointment; and provided, further, that such service as a permanent-intermittent or call fire fighter shall be credited only if such permanent-intermittent or call fire fighter was later appointed as a permanent member of the fire department.

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Scenario 8

- Lee E. Roberts is a veteran who is eligible to purchase his military service under Section 4(1)(h). He begins his career in the Town of Allenville. While there, he begins to purchase his military service by way of payroll deduction. Before the purchase is complete, he gets a new job in the Town of Bryantville. Bryantville allows him to complete his service purchase through payroll deduction, which he does. He eventually retires from Bryantville.

➤ Who is liable for the military service?



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NOTES:



Scenario 8

- A. Allenville
- B. Bryantville
- C. Both Allenville and Bryantville
- D. Neither Allenville nor Bryantville
- E. The U.S. Government

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Scenario 9

- Howie Cosello worked as a sports announcer with the Town of Milo public schools for 10 years. He never became a member of the Milo Retirement System because he did not work enough hours to qualify. He gets a full-time job in Ladyville and joins the Ladyville Retirement System. He would like to purchase service for when he worked in Milo. Milo denied the request because he was never eligible for membership. Ladyville told him that since Milo would not accept service, they wouldn't either.

- Can he make the purchase?
- Who would be liable for the service?



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NOTES:



Scenario 9

- A. Yes. Milo under Section 3(5)
- B. Yes. Ladyville under Section 3(5)
- C. Yes. Ladyville under Section 3(8)(c)
- D. No. He was not eligible for membership at the time
- E. The U.S. Government

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Scenario 10

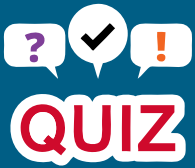
- Junior Sawyer worked part-time over a 2-month period in 1987 for the City of Granger as an arborist. You could say he knows a thing or two about chainsaws. At the time, the City of Granger did not allow part-time workers into the retirement system. In 1989, the City changed its regulations to now allow part-time workers into the system. In 1990, he took a job with the City of Granger in the meat packing plant. Before he retired, he sought to purchase the time from when he worked as an arborist.

- Can he purchase this time?
- If so, who is liable for this service?



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NOTES:



Scenario 10

- A. No. Cannot purchase this time
- B. Yes. Granger under Section 4(2)(c)
- C. Yes. Granger under Section 3(5)
- D. Yes. Pomfrey under Section 4(2)(c)

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Section 4(2)(c)

- In the case of any employee of any governmental unit who is a member of the retirement system pertaining thereto, the board may allow credit, upon whatever proportionate basis it shall determine under appropriate rules and regulations which shall be subject to the approval of the actuary, for any previous period of part-time, provisional, temporary, temporary provisional, seasonal or intermittent employment or service rendered by him after such a retirement system becomes operative and while he was not eligible for membership excluding any prescribed waiting period under the provisions of the law or under the board's rules and regulations in effect during such previous period before eligibility for membership... (*Emphasis supplied.*)

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NOTES:

Scenario 11

- Mick Socko got a job as a counselor in a health connector that services dozens of communities. Each community has its own retirement system and there is a separate retirement system that covers employees of the health connector, the HC System. The health connector is housed in Huge, the largest of the communities. Mr. Socko was erroneously enrolled in the Huge Retirement System. Three years later, the HC System requested a transfer of Mr. Socko's retirement contributions saying that he was erroneously enrolled in Huge. Huge obliged. After Mr. Socko retired, the HC System asked Huge to accept liability for the 3 years Mr. Socko was a member of that system. Huge refused.
 - Who is liable for those 3 years?

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Scenario 11

- A. Huge — Mr. Socko contributed to Huge and they received the benefit of those contributions for 3 years.
- B. The HC System — Mr. Socko should have always been a member of the HC System.
- C. The U.S. Government — why not?

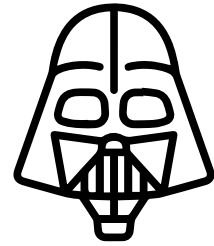
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NOTES:

Scenario 12

- Luke Vader worked 10 hours per week for Town of Hoth in 2003-2004 (well below the 20 hours per week needed for membership). In 2005, his hours were increased to 25 per week. At that time, he became a member. He left that job in 2010 and took a job in Dagobah and joined the Dagobah (Retirement) System. While a member in Dagobah, he sought to purchase service from 2003-2004. Luke argued that Hoth never informed him when he became a member in 2005, that he could possibly purchase that time. Darth Vader (completely unrelated), the Chair of the Hoth Retirement Board listened attentively as Luke made his impassioned plea. When Luke was finished, Darth spoke in a somewhat mechanical tone (*that sounded unsurprisingly like James Earl Jones*), “I find your lack of faith disturbing. However, we (Hoth) refuse to accept liability, because you were not eligible for membership at that time.”

➤ Is Hoth liable for that service?



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Scenario 13

- K.K. Bundy worked in the small Town of Woodbury for 30 years as the town gatekeeper. There was one road in, and one road out and K.K. determined who could enter. The job didn't pay well, but K.K. loved the power and prestige of the position. As retirement was quickly approaching, K.K. realized that his pension from the Town of Woodbury wouldn't be able to sustain the lifestyle he was hoping to live. K.K. was a smart man and knew there was a loophole in Chapter 32 (which has since been closed), where if he could get a high paying job for 3 years, he could combine all of his service and use the average pay from the end of his career to receive a rather substantial benefit. He phoned his cousin Al, who worked in the affluent Town of Stamford to see if he could help him out. Al got him a nice, no-heavy lifting job as the wrestling champion at the world famous Sportatorium. K.K. wrestled as champion for exactly 3 years and then retired.



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NOTES:

Scenario 13 (Continued)

- Upon retirement, Woodbury was assigned 91% (30/33) of K.K. Bundy's benefit. Whereas, Stamford was assigned 9% (3/33) of the benefit. Woodbury appealed the determination to the pension oversight board arguing 91% was too high based on the pay K.K. received. The oversight board re-determined the allocation to be 4% for Woodbury and 96% for Stamford. Stamford then appealed, arguing that 96% was too high based on only 3 years of service.

➤ Which system should pay the larger share of the benefit?



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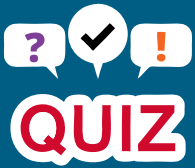
Scenario 14

- Susan Smith worked for the Town of Greenville for 10 years. She left to take a job in the Town of Sleepyville and transferred her membership. She retired from Sleepyville. Due to oversight, Sleepyville did not send a request to Greenville for reimbursement of its share of Susan's retirement allowance until she had been retired for 12 years. Greenville refused to pay the full amount, but wanted to pay half (for 6 years).

➤ How much is Greenville obligated to pay?

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NOTES:



Scenario 14

- A. Greenville should pay for all 12 years of retirement
- B. Greenville should pay for only 6 years
- C. Greenville should pay prospectively only
- D. Sleepyville should pay the entire benefit now

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Dual Membership



NOTES:

Dual Members Under Chapter 32: A Play in Three Acts

- **Act One:** Old school (1945) Chapter 658 of the Acts of 1945 (which established a single pension system)
- **Act Two:** New school (2010) Chapter 21 of the Acts of 2009
- **Act Three:** Newer school (2014) Chapter 165 of the Acts of 2014
- **Reprise:** Everything Old is New Again



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Act One: 1945



- Chapter 658 of the Acts of 1945
- How dual members had their retirement allowances calculated
- Stood test of time
- Some manipulation of the systems possible
- Section 3(7)(d)

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NOTES:

G.L. c. 32, Section 3(7)(d)

- In pertinent part:

(d) If any person who is a member of two or more systems terminates his service in one governmental unit other than by retirement but continues in service in one or more other governmental units, his membership in the system pertaining to the former governmental unit shall thereupon be transferred to the system of the governmental unit to which he is devoting the major portion of his employment and the provisions of subdivision (8) of this section shall be applicable...

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Section 3(7)(d) In a Nutshell:

- Susan is a member of Retirement System A & B simultaneously
- She leaves System A, but continues on in service in System B
- Her funds are transferred to System B
- Her creditable service is transferred to System B
- She retires from System B
- PERAC will assign System A its Section 3(8)(c) liability

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NOTES:

Section 3(7)(d) In a Nutshell *(Continued)*

- Susan will not be able to get creditable service for more than one calendar year.
- If she worked at System A and System B for the same five year period, no more than five years creditable service will be awarded.
- What's in it for Susan?
- She can combine her regular compensation for her three year final average.
- What could possibly go wrong?

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The Possibility of Manipulation

- Before Chapter 21 of the Acts of 2009, it was possible:
 - For a person to have two full time jobs in the last 3 years of service
 - To call in sick frequently for one job while attending to the other
 - Not illegal, but certainly a problem
 - Chapter 21 of the Acts of 2009 to the rescue!

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NOTES:

Act Two: Chapter 21 of the Acts of 2009



- **SECTION 7.** Subdivision (2) of said [section 5 of said chapter 32](#), as so appearing, is hereby amended by adding the following paragraph:-
 - (e) A person who has been a member of 2 or more systems and who, on or after January 1, 2010, has received regular compensation from 2 or more governmental units concurrently shall, upon retirement, receive a superannuation retirement allowance to become effective on the date of retirement that is equal to the sum of the benefits calculated pursuant to this section as though the member were retiring solely from each system; provided, however, that notwithstanding paragraph (c) of subdivision (8) of section 3, each system shall pay the superannuation retirement allowance attributable to membership in that system to the member; and provided further, that this section shall not apply to any member who has vested in 2 or more systems as of January 1, 2010.

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The Original Section 5(2)(e), In a Nutshell:

- Triggering mechanism for its application:
 - A member of 2 or more systems
 - Who, on or after January 1, 2010, has received regular compensation from 2 or more governmental units concurrently.
- Some people excluded from application of Section 5(2)(e).

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NOTES:

Members Excluded From Application of Section 5(2)(e)

“...and provided further, that this section shall not apply to any member who has vested in 2 or more systems as of January 1, 2010.”

- So if you already had 10 years in each system as of January 1, 2010, your pension would still be calculated via Section 3(7)(d).

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An Imperfect Rescue

- Questions and issues arose, among them:
 - What about service in a position for which the salary was set at less than \$5000 per year?
 - What about the mandatory language of Section 3(7)(d)?
 - The big one: People training successors in their old positions just to be nice, inadvertently triggering Section 5(2)(e).
 - Chapter 165 of the Acts of 2014 to the rescue!

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NOTES:

Act Three: Chapter 165 of the Acts of 2014



- A person who has been a member of 2 or more systems and who, on or after January 1, 2010, has received regular compensation from 2 or more governmental units concurrently **for greater than 60 days shall**, upon retirement, receive a superannuation retirement allowance to become effective on the date of retirement that is equal to the sum of the benefits calculated pursuant to this section as though the member were retiring solely from each system; provided, however, that notwithstanding paragraph (c) of subdivision (8) of section 3, each system shall pay the superannuation retirement allowance attributable to membership in that system to the member; and provided further, that this section shall not apply to any member who has vested in 2 or more systems as of January 1, 2010 **or to any position whose annual regular compensation was less than \$5,000. Paragraph (d) of subdivision (7) of section 3 shall not apply if this paragraph applies. Upon retirement a member shall be considered a dual member if the member satisfies this paragraph. This paragraph shall only apply to the 5 years of creditable service immediately preceding a member's superannuation retirement under this section. This paragraph shall not apply to section 6.**

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2014 Amendments, In a Nutshell:

- Overlapping periods in two systems shall not be considered dual membership if less than 60 days.
- A member shall not be considered a dual member if one of the positions is compensated at less than \$5000 per year.
- No applicability to Section 6, ordinary disability retirement.
- Explicitly excludes the Section 3(7)(d) transfer from occurring.
- Applies only to the 5 years of creditable service immediately preceding retirement.

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NOTES:



Reprise: Everything Old is New Again!

- Dual members will either retire under 1945's Section 3(7)(d) or 2014's Section 5(2)(e).
- If Section 5(2)(e) does not apply, Section 3(7)(d) will.
- Section 3(7)(d) transfers will occur throughout a member's career.
- Upon retirement, an analysis must be undertaken to see if Section 5(2)(e) applies.
- If it does, transfers must occur to permit the separate retirement from each system.

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If Section 5(2)(e) Applies:

- Calculated as retiring solely from each system.
- Each system shall pay the allowance attributable to membership in that system.
- Must retire simultaneously from each system.
- Must choose same Option from each system.
- Only required to have ten years of service in one of the two systems.
- Minimum allowance in Section 13 is N/A.
- For post-retirement earning capacity both salaries and pensions should be used.

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NOTES:



Dual Member Quiz 1

Peter has been an elected official in Quabbin since January 4, 2010. He then became an inspector of weights in Prestonsburg on July 14, 2015. He has worked continuously at both jobs since these dates. He comes into the Prestonsburg Retirement Board office, loudly demanding to retire with “his 3 highest years.”

- A. He can't retire, because he doesn't have 10 years in Prestonsburg.
- B. He can retire, because he has 10 years in Quabbin, but must use a 5 year average because his start date is after April 2, 2012.
- C. He can retire, but must retire from Quabbin and Prestonsburg simultaneously using a 3 year average in Quabbin and a 5 year average in Prestonsburg.
- D. He can retire, but must retire from Quabbin and Prestonsburg simultaneously using a 3 year average.

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Dual Member Quiz 2

Petunia seeks to retire from the Paintsville Housing Authority, combining her two years of service from the Magoffin County Housing Authority under Section 3(7)(d). Can she do it?

- A. Yes, since she didn't work for the PHA and the MCHA concurrently.
- B. Yes, because damages aren't synonymous with regular compensation.
- C. No, she must retire separately from each as she received regular compensation concurrently after January 1, 2010 and none of the statutory exemptions are present here.
- D. Yes, since she is allowed to combine her three highest years of service, that was the spirit of the court order.

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Dual Member Quiz 3

Hortense slips and falls on the job and retires for ADR from Martin in late 2020. Although she never returned to work at Pikeville after her injury, she now wants to retire for superannuation from Pikeville. Is this acceptable?

- A. Yes, because she received regular compensation from both systems on or after January 1, 2010.
- B. Yes, since she must be retired separately from each system, it doesn't matter if she goes out for two different kinds of retirement.
- C. No, because Section 5(2)(e) only applies to superannuation retirements.
- D. No, because if you are going to retire separately from two systems, you have to do it on the same day.

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NOTES:

Conclusion

- Chapter 32 has provisions which cover service in multiple systems.
- This can be complicated, and the statute and the facts of each individual case will determine both how an individual is to be retired, and which system will bear financial responsibility for certain parts of his or her service.
- Thank you for your attention today, and we hope we have adequately addressed all your questions.
(If we haven't, now is the time...)

COMMONWEALTH OF MASSACHUSETTS

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