

PERAC Memorandum # 7/2002

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Joseph E. Connarton, *Executive Director*

MEMORANDUM

TO: All Retirement Boards

FROM: Joseph E. Connarton, Executive Director

RE: Chapter 268A-Special Municipal Employee Designation

DATE: January 29, 2002

Recently PERAC, in conjunction with the State Ethics Commission, held a series of briefings across the state for retirement board members and staff. One issue that arose was the status of members of the retirement boards. Board members, including elected members who are retirees, are eligible for designation as “special municipal employees” for purposes of the Ethics Law (Chapter 268A). Such a designation recognizes the unique status of those individuals and provides greater flexibility in dealing with the city, town or unit than is afforded to “municipal employees”.

Chapter 268A Section 1(n) sets forth the definition of “special municipal employee”. This designation applies to the **position** not the individual. The city council, town council, board of alderman, or board of selectman must expressly make the classification of the position of “special municipal employee”. In the absence of such a classification, all employees, and thus all retirement board members, are classified as “municipal employees”. In order to effectuate a designation in this instance all retirement board positions must be so designated. For those who are also municipal employees, the designation applies in their retirement board position but does **not** extend to the municipal position.

The Ethics Commission has treated members of regional boards similar to local retirement boards as municipal employees of each unit that belongs to the regional entity. Thus the retirement board positions must be classified as “special municipal employee” in each city or town that is a governmental unit of the retirement system.

In the case of retirement board positions in the County Retirement Systems, those positions are statutorily classified as “special county employee” positions because the

positions are not compensated for more than 800 hours per year (Chapter 268A, Section 1(m)).

The impact of this classification is potentially significant depending on whether the board member does business with, represents people before, or receives compensation for services to municipal departments other than the retirement board. In those instances the prohibitions that apply to “municipal employees” are limited with respect to “special municipal employees”. These include prohibitions on receipt of compensation and acting as an attorney or agent (Chapter 268A, Section 17), the receipt of compensation by partners of a “special municipal employee”, assisting another person for compensation in the performance of a contract with or for the benefit of the city or town (Chapter 268A, Section 18), and on having a financial interest in contracts with the city or town (Chapter 268A, Section 20). The analogous provisions for “special county employees” include prohibitions on receipt of compensation and acting as attorney or agent (Chapter 268A, Section 11), the receipt of compensation by partners of “special county employees” (Chapter 268A, Section 12), and on having a financial interest in contracts of a county agency (Chapter 268A, Section 14).

It should be noted that in order to avail oneself of the protections stemming from “special municipal employee” status, an individual must make certain disclosures and filings as outlined in the statutory provisions cited.

The retirement board should make a request of the city or town for a listing of those positions classified as “special municipal employees”. If retirement board positions have been designated as such, no further action is necessary. However, if such a classification is not in place, we strongly urge you to initiate proceedings to classify these positions as “special municipal employee” positions. Boards should consult with counsel for assistance in assessing the status of the positions and effectuating the necessary classifications.