



AMRPE

Winter 2015

**Association of Montana
Retired Public Employees**

A non-profit corporation of PERA Retirees for PERA Retirees

P.O. Box 603, Helena, MT 59624-0603

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On January 13, 2015, AMRPE's lawyers, representing all Montana public employee retirees, argued in district court that Section 5 of HB 454 (Sec. 5 is the part of HB 454, 2013, that would reduce our GABA from 3% to 1.5% or lower) violated the contract clauses of the Montana and U.S. Constitutions. Leo Berry opened the argument for the retirees saying that "no law impairing the obligations of contracts shall be passed by the legislature," and our GABA is part of the state's contract with employees who eventually retire. Judge Reynolds asked Berry to explain how the GABA was part of the retirement contract.

Mr. Berry pointed to Sec. 19-2-502, MCA, which creates a contract for retirement benefits "entered into" on the first day of employment, and by applying Sec. 19-3-1605, MCA, our GABA is a part of the contract. Mr. Berry further explained that HB 454 had been introduced due to actuarial analysis showing the PERS was not fully funded as required by Montana's Constitution, but that section 5 was added at the last minute.

Berry then explained that the "California Rule" (established by California case law) required the legislature to replace any benefit removed with an equal or greater benefit. Berry said the reduction is a "substantial" interference with the contract because many retirees made life altering decisions to retire relying on the 3% GABA. The total amount taken from retirees by HB 454 amounts to hundreds of millions of dollars over time. This reduction is not reasonable or necessary because other alternative sources of funding were available.

Assistant Attorney General J. Stuart Segrest countered by saying the 2013 Legislature faced a serious problem because the PERS was not fully funded as required by law, and HB 454 was a reasonable and necessary response. He argued that Sec.5 did not "substantially" impair any "presumed contract" between the state and its retirees. He went on to say GABA is not part of the contract, because the last sentence of Sec. 19-2-502, gives the legislature the power to "revise" the GABA. *(continued on page 2)*

The Legal View



AMRPE Case Submitted

AMRPE OFFICERS , BOARD OF DIRECTORS & CONTRACT COORDINATOR

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Jim Lewis	406-449-6641	Shannon Voss, Member Coordinator	406-442-4934

The Legal View (cont.)

Segrest further argued that the 2013 Legislature was not bound by the actions of previous legislatures. He contended that the loss was not “substantial” because the GABA statute has been amended many times, and retirees benefited by having the PERS fund stabilized. Sec. 5 was reasonable and necessary, because the legislature may choose from various possible remedies. If GABA *is* part of the contract, Segrest did concede that Sec. 5 violates the Montana and U.S. Constitutions.

Attorney Chad Adams handled rebuttal arguments for AMRPE. In response to a question from the judge, Adams said the judge need not “second guess” the legislature by picking from various choices available, but simply find the law unconstitutional and send it back to the legislature.

Adams asserted that Sec. 19-2-502, MCA creates a contract that includes GABA, because the statute must be read as a whole, and the last sentence referring to revisions cannot be isolated from the sentence creating the contract. Again, the “California Rule” forbids removing a benefit without replacing it.

Judge Reynolds said he would try to issue a ruling while the legislature is still in session so they could take some other action if needed. Meanwhile, the injunction issued 13 months ago remains in place and allows the 3% GABA to be paid. Regardless of how the judge rules, there will almost assuredly be an appeal made to the Montana Supreme Court by the losing party.

A MESSAGE FROM CATHY KENDALL, AMRPE PRESIDENT

It has been a busy year for retired public employees, and the drama isn't over yet. We expect a ruling in the lawsuit fairly soon. Also, the legislature is in town, meaning we must maintain a presence at the Capitol to insist your legislators act responsibly regarding promises made to Montanans. Preserving the value of your pensions is an on-going task on several fronts so your continued support is critical. Our dues our nominal, we rely heavily on donations for our legal battle.

Rusty Wrigg stepped down after several years as president. He led our organization through the difficulties of initiating the lawsuit and otherwise protecting the benefits public employees worked so hard to earn. We owe him our gratitude for his energetic and thoughtful leadership. Jim Christnacht also retired from the board in December, after over a decade of voluntary service including a term as our president. Patty Mott and James Driggers have joined the board. Each served over thirty years as public employees. Their energy, skills and interests will help facilitate AMRPE's mission of keeping our membership fully informed about issues that matter to them.

Our legal expenses continue to rise. You may hear from us more than once this year since we need to shore up the legal fund to bring the GABA lawsuit to a close. Please consider the value of an investment in the defense of your promised retirement by sending what you can as a donation (or use a credit card or PayPal at amrpe.org).

Details regarding newly emerging issues important to you are posted regularly on the website at amrpe.org. There you will find meeting minutes, updates on bills we are monitoring, litigation news and other important information. Please contact us with suggestions or questions. Your all volunteer board will work hard over the next year to represent your interests.

THE MONTANA LEGISLATURE IS IN SESSION

The Montana Legislature meets every two years and this is the year they are in session. So far, there are 37 retirement related bill drafts and 12 of these drafts have been introduced. Most of the drafts will never be introduced because they are “place holders.” It is important that all AMRPE members be vigilant in this legislative process.

The AMRPE Board and your lobbyists are tracking any bills that may affect retirees. A link to a list of bills we are monitoring can be found on our web site amrpe.org on the Legislative Activities page in the 2015 Legislative Session subheading. This list is updated frequently upon any activity that affects a bill or AMRPE interests.

Mike O'Connor is our V.P. and Legislative Point Man



Thank You Legal Fund Contributors!

Please Donate if You Haven't Already!

A special thanks goes out to nearly 1000 members who donated to the legal fund in 2014. This is our main funding source to finance our efforts in protecting your rights as a retiree and the GABA promised to you. Since the temporary injunction ordered by Judge Reynolds in 2013, PERS retirees received two 3% pension increases. You would have only received 1.5% or less if we had not challenged the constitutionality of HB 454, passed by the 2013 legislature. A donation to AMRPE is a paltry sum in relation to the money you would have lost.

The fight goes on to protect your retirement. Our legal costs will undoubtedly rise over the next year or so when the losing party appeals to the Montana Supreme Court. **Your donations are essential. Included with this newsletter is a donation envelope for those members who did not receive the recent membership notice because you are current or generously purchased a lifetime membership.** You can also visit us on-line at amrpe.org to make your contribution. It is one of the best returns on an investment in your future. Please spread the word about the important work our group is doing to benefit retirees to your qualified friends and encourage them to join our mission. We would like nothing more than to report that our entire membership donated to the cause in a future newsletter.

THE ADVANTAGES OF MEDICAL SAVINGS ACCOUNTS

AMRPE encourages members to consider using a Montana Medical Saving Account (MSA). An MSA allows Montanans to save money for medical expenses and long-term health care and **reduce** their state income taxes at the same time. Unfortunately, only 1.4% of Montana taxpayers took advantage of the MSA in 2008 and 2009.

Pre-Medicare retirees may also be eligible for a Health Savings Account (HSA). HSAs are special savings accounts that were established by federal law to allow eligible individuals to make deposits that can be used to pay for future qualifying medical expenses. Deposits to HSAs reduce an individual's state and federal taxes. HSAs must be coupled with a qualifying high deductible health plan.

Publications that explain these accounts can be obtained on the Montana State University Extension website: store.msuextension.org. Type "Montana Medical Saving Accounts" into their search function to obtain a wealth of information. Some financial services providers may also be of assistance.



NO MORE CHANGE OF BENEFIT NOTICES!

Have you noticed that the Montana Public Employee Retirement Administration (MPERA) is no longer sending you a "change of benefit notice?!" It has long been the practice for MPERA to mail you this notice each time there is a change in your net retirement benefit. Changes are typically the GABA increase with your January benefit and changes in tax or health insurance withholdings.

The MPERA announced in the January 2014 notice that they would no longer mail this notice due to postage costs. Their plan is to allow access to your retirement record through an online portal after the new information system is implemented in July 2015. Automated systems are well and good but we understand that many of our members lived long and fruitful lives without remote information technology. They may still prefer real mail!

The AMRPE Board met with MPERA Executive Director Dore Schwinden to urge him to restore the printing and mailing of the notice. We stressed that accessing or navigating the online portal might be difficult for some retirees and may lead to errors and omissions in the benefit if the retiree does not have an easy view of their information.

In the meantime if you have questions about your benefit, call **1-877-275-7372** or **444-3154** in Helena and an MPERA Customer Service Representative will be happy to help you.

You are invited to attend any of our board meetings. They are on the 3rd Tuesday of the month from 9:30-11:30 A.M. in the MPERA board room at 100 North Park Ave in Helena. We don't meet in June, July or August. We welcome your insights and feedback, but be forewarned, guests are slowly converted into Board Members!



RETURN SERVICE REQUESTED

ASSOCIATION OF MONTANA
RETIRED PUBLIC EMPLOYEES
P.O. Box 603
Helena, MT 59624-0603

PERA retirees working for
PERA retiree benefits

We're on the Web at:

amrpe.org

E-mail: info@amrpe.org

Phone: 406-442-4934 - Answered by
Contractor for AMRPE:

**Communication and Management
Services LLC**

(leave a message)

Please Make A Donation To The Legal Fund!
Thank You To All Those Who Already Donated In 2015!
Help Us Fight For Your Guaranteed Annual Benefit Adjustment.

Change of Address Form: Send this in or send us an email: info@amrpe.org

Name	First	MI	Last
New address			
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