

Haldorson was serving in an administrative position that did not require certification in each of the 24 school districts where he was employed to prepare State Aid Adjustment claims. Persons in administrative positions that do not require certification are not members of TRS. Accordingly, Mr. Haldorson was not eligible to report the earnings from his administrative positions which did not require certification to TRS. The Board further finds that Mr. Haldorson was not performing over-time or extra duties reportable to TRS in his administrative positions that did not require certification. Lastly, the Board finds that Mr. Haldorson has no claim of estoppel against the System because TRS provided no information to Mr. Haldorson to cause him detriment. Mr. Haldorson still was employed in the 24 school districts. He still made substantial earnings. Those earnings were simply not reportable to TRS and no representation by a TRS employee can make a non-“teacher” a member of TRS.

II. Relevant Statutes and Rules

In the instant case, the Claims Hearing Committee applied 40 ILCS 5/16-106(1) and TRS Rule 1650.450(b)(1) and (2) (80 Ill. Admin. Code § 1650.450(b)(1) and (2)).

As provided in § 16-106:

“Teacher”: The following individuals, provided that for employment prior to July 1, 1990, they are employed on a full-time basis, or if not full-time, on a permanent and continuous basis in a position in which services are expected to be rendered for at least one school term: . . .

(1) Any educational, administrative, professional or other staff employed in the public common schools included within this system in a position requiring certification under the law governing the certification of teachers; . . .

As provided in TRS Rule 1650.450(b)(1) and (2):

b) Examples of salary amounts to be reported to the System include:

- 1) The gross amount of wages or compensation earned or accruing to the member during the legal school term or the length of his or her employment agreement, whichever is

- greater, in a function requiring certification as a teacher, and payable by the employer at termination of service;
- 2) Wages or compensation for overtime or extra service; . . .

III. Issue Statement

The Parties did not agree upon issue statements prior to submission of the case to the Claims Hearing Committee. After carefully reviewing the pleadings of the Parties and the exhibits attached thereto, the Claims Hearing Committee has determined the issues of the case to be as follows.

(1) Was Mr. Haldorson serving in a position requiring certification under the laws governing the certification of teachers?

(2) Was Mr. Haldorson performing overtime or extra service when he served in an administrative position that did not require certification in the 24 school districts where he was employed to prepare State Aid Adjustment claims?

(3) Is TRS estopped from disallowing Mr. Haldorson's earnings from his non-TRS covered employment in the 24 districts for which he prepared State Aid Adjustment claims?

IV. Statement of Facts

Prior to hearing, the Parties stipulated to the following and the Claims Hearing Committee hereby adopts these stipulations as the facts of this case.:

1) Mr. Ralph Haldorson is a TRS member, now receiving an annuity from the Teachers' Retirement System of the State of Illinois.

2) From July 1, 1966 until June 1, 1994, Mr. Haldorson served as a District Superintendent in Illinois. From June 15, 1981 until June 1, 1994, Mr. Haldorson served as District Superintendent of Richland Grade School District 88A.

3) Prior to being issued an All-Grade Supervisory Certificate from the State of Illinois Teachers' Certification Board, Mr. Haldorson was required to complete a course in school finance. Prior to being issued an administrative K-12 certificate with the Superintendent's endorsement, Mr. Haldorson was further required to complete advance course work, which included school finance. State Aid claim computation was a component of each course.

4) While acting as Superintendent of Schools for Richland School District 88A, Will County, Illinois, Mr. Haldorson entered into contracts with various school districts to prepare and submit State Aid recomputation claims to the Illinois State Board of Education.

5) As a result of his work, Mr. Haldorson received compensation based upon the amounts he secured for the Districts for which he filed State Aid Adjustment claims according to the terms set forth in his standard contract.

6) One of the school districts for which Mr. Haldorson performed State Aid Adjustment claims was Valley View Unit School District 365U.

7) On or about November, 1991, Mr. Haldorson discussed computing State Aid Adjustment claims for Valley View School District with Valley View officials.

8) Mr. Haldorson estimated that Valley View's property evaluation losses could entitle the District to State Aid Adjustments estimated at about \$70,000.

9) Based upon his \$70,000 State Aid Adjustment estimate, Valley View entered into a contract with Mr. Haldorson wherein he would be paid 15% of the monies recovered.

10) Based upon his \$70,000 State Aid Adjustment estimate, Mr. Haldorson's earnings would be approximately \$10,500.

11) Mr. Haldorson and Valley View School District agreed to a flat \$9,000 payment before any monies were recovered, and the balance was paid after Valley View School District received a printout from the ISBE verifying the recovered amounts. All of Mr. Haldorson's State Aid Adjustment contracts were fashioned with the Valley View contract as a model.

12) Based upon notification by the ISBE to Valley View officials of the State Aid Adjustment Mr. Haldorson secured for Valley View School District, a simultaneous and independent calculation by both Mr. Haldorson and the District yielded the same earnings as per his contract.

13) The District recovered approximately \$72,000, and Mr. Haldorson was paid approximately \$10,900.

14) Valley View reported Mr. Haldorson's earnings to the Teachers' Retirement System for the 1991-92, 1992-93 and 1993-94 School Years. In the 1991-92 School Year, Mr. Haldorson was reported as a part-time, contractual employee. In the 1992-93 and 1993-94 School Years, Mr. Haldorson was reported as an extra duty employee. After a large number of districts reported Mr. Haldorson as an employee, copies of Mr. Haldorson's State Aid Adjustment contracts were requested to be furnished to TRS. These requests were sent to those schools reporting Mr. Haldorson during the summer and fall of 1994. After TRS reviewed these contracts, Mr. Haldorson's Valley View earnings in the 1991-92, 1992-93 and 1993-94 School Years, as well as those for other districts for which he prepared State Aid Adjustments, were disallowed by TRS as creditable earnings.

15) Federal and State of Illinois withholding taxes were deducted from Mr. Haldorson's State Aid recomputation earnings and deductions were remitted to the IRS and the State of Illinois.

16) Valley View School District kept a personnel file on Mr. Haldorson.

17) Mr. Haldorson, after performing his work for Valley View School District, would sit down with officials from the District and review the entire process for the tax years for which he was filing claims. Mr. Haldorson reported to John Lukancic, Deputy Superintendent of Valley View School District. Mr. Haldorson also reported to Dr. Harry Hayes, Superintendent of Valley View, who made a subsequent report to the Board of Education. The Superintendent and Board of Education signed and submitted all State Aid recomputation claims.

18) When Mr. Haldorson prepared State Aid Adjustments for Valley View School District, he was allowed access to its office. He was also allowed access to one of Valley View School District's secretaries, who made copies and stapled documents for Mr. Haldorson for submission to the Illinois State Board of Education.

19) In preparation for and while preparing State Aid recomputation claims, Ralph Haldorson spoke with Todd Kennedy of the Teachers' Retirement System of the State of Illinois during the months of January, 1992 and June, 1992. In response to these telephone conversations, Mr. Haldorson wrote a letter dated July 13, 1992. TRS replied to that letter on July 30, 1992. The substance of these telephone conversations are set forth in Mr. Haldorson's July 13, 1992 letter, and in TRS' July 30, 1992 letter.

Based upon the hearing record and exhibits thereto, the Claims Hearing Committee makes the following additional finding of facts.

20) Mr. Haldorson was serving in an administrative position that did not require certification in each of the 24 school districts where he was employed to prepare State Aid Adjustment claims (see Illinois State Board of Education Rulings on page 49 of Mr. Haldorson's Hearing Packet).

21) Mr. Haldorson did not apprise Mr. Kennedy at any time that he was employed in an administrative position that did not require certification in the 24 school districts where he was employed to prepare State Aid Adjustment claims.

22) Mr. Haldorson earned \$311,616.26 from the 24 school districts where he was employed to prepare State Aid Adjustment claims.

V. Position of the Parties

Both Parties devoted substantial portions of their respective briefs arguing whether Mr. Haldorson's earnings were "salary" under the provisions of 40 ILCS 5/16-121. However, the Claims Hearing Committee has determined it does not need to address this issue to decide this matter. This leaves the parties in dispute over the following.

It is TRS' position that Mr. Haldorson's State Aid Adjustment earnings are not reportable because they were earned in a positions not requiring certification. It is TRS' further position that Mr. Haldorson's earnings were not the result of overtime or extra service and reportable under TRS Rule 1650.450(b)(2). Lastly, it is TRS' position that it provided no information that caused Mr. Haldorson to act to his detriment and that, therefore, he has no claim of estoppel against the System.

It is Mr. Haldorson's position that he was serving in a certificated position and that, even if he was not, his earnings qualify to be reported as overtime or extra service. Mr. Haldorson further claims that TRS is estopped from denying the reporting of his State Aid Adjustment earnings because he contacted TRS to determine if State Aid Adjustment earnings were reportable.

VI. Discussion and Analysis

Pursuant to 40 ILCS 5/16-107, to be a "member" of TRS, one must be a "teacher" included within the membership of the System. "Teacher" is defined in 40 ILCS 5/16-106. Pursuant to Section 16-106(1), "teacher" includes:

Any educational, administrative, professional or other staff employed in the public common schools included within this system in a position requiring certification under the law governing the certification of teachers; (Emphasis added).

On December 28, 1995, TRS submitted Mr. Haldorson's standard contract (Hearing Packet at p. 50 and 51) to the Illinois State Board of Education (ISBE) for a determination if Mr. Haldorson was serving in a position requiring certification under the law governing the certification of teachers in the 24 school districts from which he seeks to report earnings. ISBE responded as follows:

I am in receipt of fax documents you forwarded to Bob Blazis describing a "part-time certified administrator" responsible for preparing and filing General State Aid and transportation

recomputation claims. Please be advised that the duties described do not require a teaching or administrative certificate. However, a school district could hire such an individual.

Based upon this ruling from the State Board, the State Agency responsible for certificating school personnel (see 105 ILCS 5/21-1, et seq.), the Claims Hearing Committee finds Mr. Haldorson was not eligible to report his earnings from the 24 school districts where he was employed in an administrative position that did not require certification.

That Mr. Haldorson should not have been reported to TRS is also clearly set forth in the TRS Employer Guide. As stated therein on page 2.2 of Chapter 2, Membership:

Positions not covered by TRS

The following positions do not contribute to TRS, but may qualify for membership in the Illinois Municipal Retirement Fund (IMRF). For more information concerning employees covered by IMRF, consult the IMRF Manual for Authorized Agents.

Position

Administrator in a position not requiring certification Athletic official with IHSA or similar contract

Bus driver

Cafeteria worker

CETA-funded position if first employed after 6/30/79

Clerical worker

Coaching unless by full-time or part-time contractual teacher

Custodian

Nurse if employed prior to 7/1/76 and not certificated

Paraprofessional

Psychologist intern

Retired teacher if no more than 100 days/500 hours per school year**

Secretary

Security guard

Social worker, intern

Student teacher

Teacher's aide

Tutor paid by parent or student

(Emphasis added) (Exhibit E).

As a School Superintendent, Mr. Haldorson had access to the TRS Employer Guide and should have been familiar with its contents. The Committee finds that Mr. Haldorson was given adequate notice that administrative positions that do not require certification were and are not reportable to TRS. Furthermore, as stated on page 3.3 of the Employer Guide: “[t]he State Board of Education, not the individual employer, determines whether a position or extra duty requires certification.” Accordingly, the representation that Mr. Haldorson was being employed as a “part-time certified (TRS eligible) administrator” is irrelevant. As has been pointed out, only the Illinois State Board of Education is authorized by statute to make such a determination.

Additionally, TRS Rule 1650.450(b)(1) makes it clear that noncertificated school personnel do not report earnings to TRS. As stated therein:

- b) Examples of salary amounts to be reported to the System include:
 - 1) The gross amount of wages or compensation earned or accruing to the member during the legal school term or the length of his or her employment agreement, whichever is greater, in a function requiring certification as a teacher, and payable by the employer at termination of service; . . . (Emphasis added).

Mr. Haldorson’s State Aid Adjustment claim function did not require “certification as a teacher.” Therefore, those earnings are not reportable to TRS.

Mr. Haldorson asserts that his State Aid Adjustment earnings should be reportable under TRS Rule 1650.450(b)(2) as “wages or compensation for overtime or extra service.” The Committee finds otherwise for the following reasons.

“Overtime wage” is defined in Black’s Law Dictionary as that “portion of wages paid (an) employee for services rendered beyond (the employee’s) regularly fixed working hours.” Mr. Haldorson’s letter of July 30, 1992, confirms that he had no regular fixed working hours in the districts in which he filed State Aid Adjustment claims. Since he had no regular fixed hours, Mr. Haldorson could not be considered to be working overtime or to be receiving overtime pay for his State Aid Adjustment work.

Nor was Mr. Haldorson performing “extra service” or “extra duties” in the districts where he was engaged as a State Aid Adjustment administrator. The preparation of State Aid Adjustment claims was Mr. Haldorson’s duty in those districts. It was not an “extra” duty or service he performed. As previously stated the reporting of Mr. Haldorson’s State Aid Adjustment earnings is governed by TRS Rule 1650.450(b)(1).

To repeat, Mr. Haldorson’s State Aid Adjustment positions were not teaching positions, nor was he performing a function requiring certification as a teacher. Accordingly, Mr. Haldorson’s State Aid Adjustment earnings were not reportable to TRS.

Mr. Haldorson claims TRS admits in Todd Kennedy’s letter of July 30, 1992, that Mr. Haldorson was performing overtime and/or extra service (extra duty) work. The Committee disagrees. Mr. Haldorson did not advise Mr. Kennedy in his July 13, 1992, letter that he was going to be performing services in a position that did not require certification in each of the districts for which he prepared State Aid Adjustments. As a matter of law, since Mr. Haldorson’s positions did not require certification, he cannot report his State Aid Adjustment earnings to TRS.

Mr. Haldorson goes on to argue that his State Aid Adjustment work is the same as coaching and, therefore, reportable as “extra service” or “extra duty” pay. He specifically points to Example 15 on page 5.3 of the TRS Employer Guide to support his position. The Committee finds that this argument fails for the following reasons.

TRS does not treat coaching the same as serving in an administrative position that does not require certification. TRS’ Employer Guide clearly distinguishes the two. Coaching is only reportable to TRS if it is performed by a full-time or part-time contractual teacher. “Administrators in a position not requiring certification” are never reportable to TRS.

Furthermore, the reporting of “extra service” as provided in TRS Rule 1650.450(b)(2) and page 3.3 and 3.4 of the Employer Guide does not include the reporting of earnings from a separate and distinct position which does not require certification. On page 3.3 of the Employer Guide, a list of extra duties not requiring certification is provided (Hearing Packet at p. 75). The Committee finds

the duties set forth therein to be clearly “extra” in nature. School districts hire teachers and administrators. Drama club sponsor, lunch room supervisor, or learning objective preparer, etc. are “extra duties” traditionally performed by teachers. Teachers receive a small stipend for the extra time they spend on these “extra duties” after or during the school day working with students or on student-oriented activities.

Mr. Haldorson, on the other hand, filled a position as an Administrator. A position not requiring certification and not involving the supervision of students, as the Committee noted previously, is a position not covered by TRS. Accordingly, the Committee finds Mr. Haldorson was not performing “extra duties” for the 24 districts who employed him to prepare State Aid Adjustments.

Lastly, the Committee finds that the System is not estopped from disallowing the reporting of Mr. Haldorson’s State Aid Adjustment earnings. As stated in Gianetti v. Angiuli, 200 Ill. Dec. 744, 635 N.E.2d 1083 (1994):

Equitable estoppel is a doctrine that is invoked to prevent fraud and injustice and arises whenever a party, by his word or conduct, reasonably induces another to rely on his representations and leads another, as a result of that reliance, to change his position to his injury. (*Payne v. Mill Race Inn* (1987), 152 Ill.App.3d 269, 276-77, 105 Ill.Dec. 324, 504 N.E.2d 193.) (Gianetti at p. 751).

In the instant case, there was no change of position by Mr. Haldorson to his injury. Mr. Haldorson continued to work in the 24 school districts. He still earned \$311,616.26 from those districts. His only complaint is that he was not allowed to report those earnings to TRS to increase his pension, something he was not allowed to do by the Pension Code in the first place.

As further stated in Lewis-Connelly v. Bd of Ed., 214 Ill. Dec. 92, 660 N.E.2d 283 (1996):

Defendant correctly asserts that “the doctrine of estoppel cannot be invoked against a public body when the action taken by it was *ultra vires*, i.e., beyond its authority and void.” (*Evans v. Benjamin School District no. 25* (1985), 134 Ill.App.3d 875, 883, 89 Ill.Dec. 637, 480 N.E.2d 1380.) Here, the Board’s action of allowing plaintiff to teach until February 25 was beyond its authority because sections 21-1 and

21-1b prohibited such action. “The doctrine of estoppel may not be applied to validate an *ultra vires* act, and we will not do so here.” *Evans*, 134 Ill.App.3d at 883, 89 Ill.Dec. 637, 480 N.E.2d 1380. (Lewis-Connelly at p. 96).

Under the provisions of § 16-106(a), Mr. Haldorson was not eligible to contribute to TRS because he was not serving in certificated positions in the 24 districts. The Committee finds that, even if Mr. Kennedy had received all the facts from Mr. Haldorson, no representation by a TRS staff member could change the operation of § 16-106(a).

Based upon the foregoing, it is the Claims Hearing Committee’s recommendation that the staff determination regarding the reportability of the earnings from the 24 districts Mr. Haldorson served in an administrative position that did not require certification be upheld.

VIII. Notice of Right to File Exceptions

Exceptions to the Claims Hearing Committee’s Proposed Decision must be filed within fifteen (15) days of receipt by the Petitioner. A Final Decision will be issued by the Board of Trustees after it has considered the Claims Hearing Committee’s Proposed Decision and any exceptions filed by the Petitioner.