

**IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT, CHANCERY DIVISION**

**BOARD OF EDUCATION OF THE)
CITY OF CHICAGO,)**

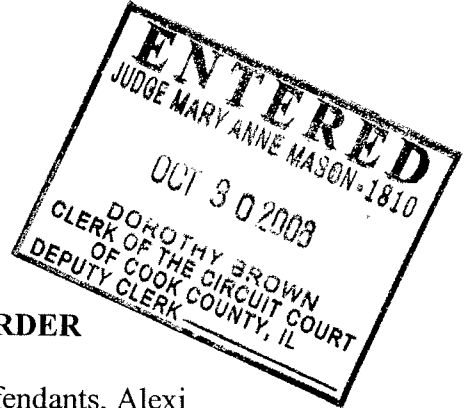
Plaintiff,)

v.)

**ALEXI GIANNOULIAS, in his official)
Capacity as Treasurer of the State of)
Illinois, and DANIEL HYNES, in his)
official capacity as Comptroller of the)
State of Illinois,)**

Defendants.)

No. 08 CH 9640



MEMORANDUM OPINION AND ORDER

This case comes before the court on the motions of defendants, Alexi Giannoulis, Treasurer of the State of Illinois, Daniel Hynes, Comptroller of the State of Illinois, and intervenor, Teachers' Retirement System (TRS), to Dismiss Plaintiff, Board of Education of the City of Chicago's ("the Board"), Complaint for Declaratory Judgment and Injunctive Relief. Giannoulis, Hynes, and TRS are collectively referred to herein as "Defendants." The motions are brought pursuant to section 2-615 of the Code of Civil Procedure. 735 ILCS 5/2-615.

TRS was established by the Illinois General Assembly in order to provide retirement and other benefits to public school teachers in Illinois, except those employed in public schools located within the Chicago Public School District (CPS). TRS is a state entity for which the state bears funding responsibility. In 1995, the General Assembly passed Public Act 88-593, which mandated that each year the State of Illinois contribute

to TRS via appropriations in amounts determined by the Illinois Pension Code.

Specifically, section 16-158 of the Pension Code provides:

The State shall make contributions to [TRS] by means of appropriations from the Common School Fund and other State funds of amounts which, together with employee contributions, investment income, and other income, will be sufficient to meet the cost of maintaining and administering [TRS] on a 90% funded basis in accordance with actuarial recommendations.

TRS is required to achieve a 90% funded ratio by 2045. 40 ILCS 5/16-158.

Public school teachers within CPS receive retirement and other benefits through an entity separate from TRS, the Chicago Teachers' Pension Fund (CTPF), which was also established by the General Assembly and is also governed by the Pension Code.

CTPF is not a state entity, but is an independent body managed by the Board. Unlike TRS, the General Assembly did not mandate that the State contribute to CTPF. Rather, the Pension Code provision applicable to CTPF recites:

The General Assembly finds that for many years the State has contributed to the Fund an annual amount that is between 20% and 30% of the amount of the annual State contribution to the Article 16 retirement system [TRS], and the General Assembly declares that it is its goal and intention to continue this level of contribution to the Fund in the future.

40 ILCS 5/17-127(b). Thus, while TRS is guaranteed state funding each year, there is no comparable provision applicable to CTPF. CTPF, like TRS, is statutorily mandated to achieve a 90% funding level by 2045.

In 2002, the Board filed a Complaint, case number 02 CH 3445 ("the first lawsuit"), against the Comptroller, Treasurer, and Attorney General of the State of Illinois contending that the disparate funding of TRS and CTPF by the State 1) constituted "special legislation" in violation of the Illinois Constitution (Count I); 2) violated the equal protection and due process guarantees in the Illinois Constitution

(Count II); and 3) violated the Education Article of the Illinois Constitution (Count III). TRS was granted leave to intervene in the first lawsuit as a party-defendant. On the defendants' motions to dismiss in that case, Judge Peter Flynn dismissed Counts II and III with prejudice, and dismissed Count I without prejudice, finding that the special legislation claim was not ripe at the time, but could become ripe in the future under certain circumstances.

The Board filed the instant complaint against the Treasurer and Comptroller on March 13, 2008. The complaint contains one count, essentially repeating the special legislation claim asserted in the first lawsuit. The complaint alleges that under the statutory scheme, the Board is the only school district in Illinois compelled to guarantee the financial health of its pension fund. As a result of the discrepancy between mandatory (TRS) and discretionary (CTPF) state funding, the Board alleges that the State has appropriated increasingly greater amounts each year to fund TRS, while failing each year to meet its stated goal of providing funding to CTPF that is between 20% and 30% of the appropriation for TRS. Over the period from 2006 through 2008, the complaint alleges that the discretionary state funding for CTPF, as a percentage of the TRS appropriation, has gone from 14% (2006), to 10.2% (2007) to 7.2% (2008). In contrast, over the same period, it is alleged that appropriations for TRS have increased from \$534 million (2006) to \$1.041 billion (2008). Because the level of state funding is currently insufficient to satisfy the Board's required contribution under the Pension Code and because the Board is already levying property taxes up to the cap permitted under Illinois law, the Board alleges that it has been compelled to divert funds from its general education fund to meet its pension funding obligations. As a result, the Board claims that

the statutory funding disparity constitutes special legislation that discriminates among similarly situated persons with no rational basis.

A section 2-615 motion to dismiss attacks the legal sufficiency of the complaint. Kolegas v. Heftel Broadcasting Corp., 154 Ill. 2d 1, 8 (1992). This motion presents the question of whether the allegations of the complaint, when viewed in a light most favorable to the plaintiff, are sufficient to state a cause of action upon which relief can be granted. Chandler v. Ill. Cent. R.R., 207 Ill. 2d 331, 348 (2003). In ruling on a section 2-615 motion, a trial court is to consider only the allegations of the pleadings. Id. at 349.

The “Special Legislation Clause” of the Illinois Constitution states:

The General Assembly shall pass no special or local law when a general law is or can be made applicable. Whether a general law is or can be made applicable shall be a matter for judicial determination.

Ill. Const. art. IV, § 13. The legislature is prohibited under this section of the Illinois Constitution from conferring a special benefit or exclusive privilege on a person or class to the exclusion of others similarly situated. New Heights Recovery & Power, LLC v. Bower, 347 Ill. App. 3d 89, 98 (1st Dist. 2004) (citing, In re Petition of the Village of Vernon Hills, 168 Ill. 2d 117, 122 (1995)). The special legislation clause of the Illinois Constitution does not protect against all classifications, only against arbitrary classifications that discriminate in favor of a select group without a sound and rational basis. Bower, 347 Ill. App. 3d at 98 (citing, In re Estate of Jolliff, 199 Ill. 2d 510, 519 (2002)).

The parties agree that the standards used to evaluate special legislation under the Illinois Constitution are the same standards applicable to equal protection claims. People ex rel. Skinner v. Hellmuth, Obata & Kassabaum, Inc., 114 Ill. 2d 252, 259 (1986)

(citing, Jenkins v. Wu, 102 Ill. 2d 468, 477-78 (1984); Ill. Housing Dev. Auth. v. Van Meter, 82 Ill. 2d 116, 124 (1980)). Under this analysis, legislative classification is permissible so long as there is a reasonable basis for the classification. Skinner, 114 Ill. 2d at 259 (citing, People ex rel. DiFanis v. Barr, 83 Ill. 2d 191, 204 (1980); Anderson v. Wagner, 79 Ill. 2d 295, 315(1979)). Under the rational basis test, a statutory classification should be upheld if the court “can reasonably conceive of any set of facts that justify a distinction between the class the statute benefits and the class outside its scope.” General Motors Corp. v. State Motor Vehicle Review Bd., 224 Ill. 2d 1, 31 (1977). “There is always a presumption that the General Assembly acted conscientiously, that the court will not interfere with its judgment unless classification is clearly unreasonable and palpably arbitrary, and that all reasonable doubts are to be resolved in favor of upholding the validity of a statute.” Skinner, 114 Ill. 2d at 259 (quoting, Delaney v. Badame, 49 Ill. 2d 168, 171 (1971)).

The burden is on the party challenging legislation to demonstrate that the legislation is arbitrary and unreasonable. Skinner, 114 Ill. 2d at 262 (citing, Van Meter, 82 Ill. 2d at 122; Hoffmann v. Clark, 69 Ill. 2d 402, 425 (1977)). Moreover, a legislative classification must be upheld if any reasonable state of facts may be conceived to justify it, Skinner, 114 Ill. 2d at 262, 500 N.E.2d at 38 (citing, Van Meter, 82 Ill. 2d at 122; Friedman & Rochester, Ltd. v. Walsh, 67 Ill. 2d 413, 419 (1977); Davis v. Commonwealth Edison Co., 61 Ill. 2d 494, 497(1975)), “even if the reasoning advanced did not motivate the legislative action.” People ex rel. Lumpkin v. Cassidy, 184 Ill. 2d 117, 124 (1998).

Defendants first argue that the matter is not ripe for adjudication because the Board is not yet suffering any harm under the current funding scheme. CTPF is still better funded than TRS, a circumstance that led Judge Flynn in the first lawsuit to conclude that the Board in that case could not, as a matter of law, establish that the General Assembly lacked a rational basis for the legislation and, in particular, the disparate funding mechanism, when it was enacted. The allegations of the complaint, however, which must be taken as true for purposes of this motion, indicate that because of the diminishing level of discretionary state funding, the Board has been required “to invade its general educational fund to divert tax money levied for educating children into educator pension funds.” This injury, which is allegedly being suffered by the Board currently, gives rise to a justiciable controversy.

Defendants also move to dismiss the Complaint on the ground that there exists a rational basis for the disparate funding treatment of TRS and CTPF. As noted above, legislative classification is permissible so long as there is a reasonable basis for the classification, and when the legislation in question passes this test, it does not violate the special legislation clause. Defendants offer several potential rational bases upon which the different funding mechanisms might be premised, and emphasize that rational-basis scrutiny is extremely deferential to the legislature.

First, Defendants posit that the General Assembly could reasonably have decided that mandating State contributions to TRS and not to CTPF was required in order to increase the funding level of the less-well-funded TRS. Defendants ask the court to take judicial notice of the public audits of both entities, which reflect that while CTPF has been funded at a level ranging between a 78% and 100.8% over the last ten years, TRS

has been funded at a much lower level – between 49.2% and 68.2% – over the same time period. In 1995, when the subject legislation was enacted, CTPF’s funding level was 82%, while TRS was only 55% funded. Thus, Defendants argue, “the legislature here could have made a conscious choice to give greater financial support to the pension fund that has needed, and continues to need, more support.” The Board, on the other hand, takes the position that this is not a rational basis upon which to treat TRS and CTPF differently, since both entities are under-funded, and both require additional support. The Board also points out that since Public Act 88-593 was enacted, the funded ratio of TRS has improved from 55% to 63.8% while the funded ratio of CTPF has decreased from 82% to 80.1%. These facts cited by the Board, however, are not sufficient to overcome the conclusion that TRS has been (and remains) under-funded to a substantially greater degree than CTPF, and the court agrees that this constitutes a rational basis for the legislative classification.¹

Defendants also offer another potential basis upon which to uphold the classification. Defendants point out that, unlike TRS, the Board has the authority to fund CTPF by way of property taxation. See 40 ILCS 5/17-219. Defendants argue that because CTPF has a funding source that is unavailable to TRS, the legislature could rationally have concluded that it was not necessary to mandate State contributions to CTPF. The Board counters that, as is alleged in the Complaint, it is already levying property taxes up to the cap permitted under the Property Tax Extension Limitation Law

¹ The rational basis test looks to circumstances that existed at the time the challenged legislation was enacted. As the court has found, those circumstances give rise to a rational basis for treating the two pension funds differently. That result would obtain even if, over the ensuing years, the funding level of TRS equaled or even exceeded that of CTPF. If mandatory state funding for TRS no longer made sense because of the relative financial health of the funds, that would not mean that the legislation evolved into prohibited special legislation. Rather, the remedy for the imbalance would lie with the legislature.

("PTELL"), 18 ILCS 200/18-185 to 18-245, and has taxed up to the cap in nine of the last ten years. This argument misses the mark, however. While the Board may be unable to *increase* the amount of tax revenue it generates (at least absent a referendum), it nevertheless has available a source of revenue unavailable to its state counterpart. The General Assembly could reasonably have concluded that this revenue stream rendered mandatory state funding unnecessary.

In addition, TRS argues that "the legislature could reasonably have concluded that the distinction was advisable based on the relative size of the Chicago school district." TRS contends that the General Assembly may have determined that there were enough teachers within CPS to justify creating a separate pension fund to be owned and operated by the Board, while all other school districts in Illinois were too "small and fragmented," and needed to be aggregated. While these contentions may be true, they justify a potential rationale for creating separate funds, but not for mandating State funding for one entity and not the other. According to the Complaint, as of June 30, 2006, TRS had approximately 160,000 active members, whereas CTPF had approximately 35,000. Standing alone, the relative size of the Chicago School District does not bear a rational relation to the absence of mandated State funding.

TRS also advances another potential rational basis for providing mandatory State funding for TRS and not for CTPF: TRS is a state entity, while CTPF is not. The Board acknowledges in its Complaint that "TRS is a component unit of the State of Illinois." Further, as the court in Guse v. Board of Trustees of Public School Teachers' Pension and Retirement Fund of Chicago made clear, "in establishing the [CTPF], the Illinois General Assembly sought to create an entity independent of the State." 203 Ill. App. 3d

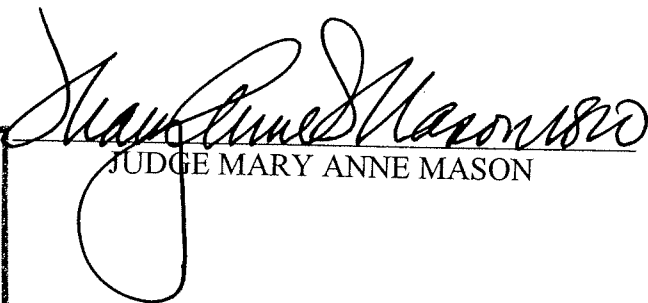
111, 116 (1st Dist. 1990). TRS argues that the legislature could reasonably have decided that the State should be mandated to contribute to TRS as a state entity, while allowing the State discretion in funding CTPF, an entity independent from the State. The court agrees.

The Board contends that the foregoing rationales proffered by Defendants are “flights of fancy” that should be disregarded in light of what the Board characterizes as a clear indication of the legislature’s intent in Section 17-127(b) of the Pension Code setting forth the General Assembly’s declaration of intent to continue its past level of funding for the CTPF. However, it does not appear to the court that the aspirational language of section 17-127(b) purports to articulate the basis upon which the legislature determined that mandatory funding for TRS was appropriate, while discretionary funding for CTPF would suffice. The case law makes clear that a legislative classification must be upheld if any reasonable state of facts may be conceived to justify it. Skinner, 114 Ill. 2d at 262. Here, given the alternative rational bases articulated by defendants for the legislative treatment of the two entities, it is clear that the legislation complained of must be upheld.

For the foregoing reasons, IT IS HEREBY ORDERED that plaintiff’s complaint be dismissed with prejudice. This is a final and appealable order.

DATE: October 30, 2008

ENTER:


JUDGE MARY ANNE MASON

