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REGULATION 223 - 2017- DECLARATORY ORDERS

A. Purpose and Use of Declaratory Orders

To the extent any retirant or member of the Arkansas Public Employees Retirement System ("APERS") has questions concerning the applicability of any rule, statute, or other order of the APERS Board of Directors ("the Board"), the retiree or member submit a written petition for a declaratory order to the Executive Director of APERS.

A declaratory order is a means of resolving a controversy or answering questions concerning the applicability of statutory provisions, rules, or orders over which the agency has authority. A petition for declaratory order may be used only to resolve questions as to how the statutes, rules, or orders may apply to the petitioner's particular circumstances. A declaratory order is not the appropriate means for determining the conduct of another person or for obtaining a policy statement of general applicability from the Board. A petition or declaratory order must describe the potential impact of statutes, rules, or orders upon the petitioner's interests.

B. The Petition

The process to obtain a declaratory order is begun by filing with the Executive Director of APERS a petition that provides the following information:

1. The caption shall read: Petition for Declaratory Order Before the Arkansas State Employees Retirement System Board of Trustees.
2. The name, address, telephone number, and facsimile number of the petitioner.
3. The name, address, telephone number, and facsimile number of the attorney of the petitioner.
4. The statutory provision(s), the Board rule(s), or the Board order(s) on which the declaratory order is sought.
5. A description of how the statutes, rules, or orders may substantially affect the petitioner and the petitioner's particular set of circumstances, and the question or issue on which petitioner seeks a declaratory order.
6. The signature of the petitioner or petitioner's attorney.
7. The date.
8. Request for hearing, if desired.

C. Board Disposition

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1. If the facts or circumstances provided in the petition are insufficient in detail to enable the Board to render a declaratory order, the Board has the authority to request supplemental information from the petitioner. If the supplemental information is insufficient or is not provided, the Board may so state and is authorized to not render a declaratory order based upon what the Board considers insufficient detail. The timeframes outlined in this rule shall reset on the date the Executive Director receives the supplemental information.

2. The Board may hold a hearing to consider a petition for declaratory statement. If a hearing is held, it shall be conducted in accordance with A.C.A. §25-15-208, §25-15-213 and the Board's rules for adjudicatory hearings.

3. The Board may rely on the statements of fact set out in the petition without taking any position with regard to the validity of the facts. Within ninety (90) days of the filing of the petition, the Board will render a final order denying the petition or issuing a declaratory order.

4. The Board may reconsider, withdraw, or amend a prior order upon its own motion. Written notice of the motion shall be mailed to the original petitioner at the last known address of the petitioner.