

STATE OF MISSISSIPPI



JIM HOOD  
ATTORNEY GENERAL

OPINIONS  
DIVISION

January 25, 2019

DeMoreo Reddick, Esquire  
Board Attorney  
Okolona Municipal Separate School District  
Post Office Box 465  
Okolona, Mississippi 38860

Re: Calculation of Earned Compensation for Retirement Purposes

Dear Mr. Reddick:

Attorney General Jim Hood is in receipt of your opinion request and has assigned it to me for research and reply.

### Facts

In your letter, you explain that the superintendent of the Okolona Municipal Separate School District was hired on April 1, 2013. He was granted housing maintenance on March 25, 2013, as part of his contract with the School District. He has lived in the superintendent's house located at 105 North Church Street in Okolona, Mississippi since April 1, 2013.

### Question Presented

Are all superintendents of education hired before July 1, 2013 grandfathered-in to receive housing allowance calculations into their PERS retirement package?

### Response

No. Pursuant to Section 25-11-103 of the Mississippi Code Annotated, the value of housing maintenance furnished to a superintendent may only be included in calculating earned compensation if the proper amount of employer and employee contributions have been paid on the maintenance and the employee was receiving maintenance and having maintenance reported to the system as of June 30, 2013.

### Legal Research and Analysis

Section 25-11-103 provides, in pertinent part:

(k) "Earned compensation" means the full amount earned during a fiscal year by an employee not to exceed the employee compensation limit set pursuant to Section 401(a)(17) of the Internal Revenue Code for the calendar year in which the fiscal year begins and proportionately for less than one (1) year of service. Except as otherwise provided in this paragraph, the value of maintenance furnished to an employee shall not be included in earned compensation. Earned compensation shall not include any amounts paid by the employer for health or life insurance premiums for an employee. Earned compensation shall be limited to the regular periodic compensation paid, exclusive of litigation fees, bond fees, performance-based incentive payments, and other similar extraordinary nonrecurring payments. In addition, any member in a covered position, as defined by Public Employees' Retirement System laws and regulations, who is also employed by another covered agency or political subdivision shall have the earnings of that additional employment reported to the Public Employees' Retirement System regardless of whether the additional employment is sufficient in itself to be a covered position. In addition, computation of earned compensation shall be governed by the following.

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***(viii) The value of maintenance furnished to an employee before July 1, 2013, for which the proper amount of employer and employee contributions have been paid, shall be included in earned compensation. From and after July 1, 2013, the value of maintenance furnished to an employee shall be reported as earned compensation only if the proper amount of employer and employee contributions have been paid on the maintenance and the employee was receiving maintenance and having maintenance reported to the system as of June 30, 2013.*** The value of maintenance when not paid in money shall be fixed by the employing state agency, and, in case of doubt, by the board of trustees as defined in Section 25-11-15.

***(Emphasis added.)***

In your factual scenario, the superintendent was hired on April 1, 2013 and received value for maintenance with the provision of a home, which he began residing in effective April 1, 2013. Thus, the value of maintenance furnished to the superintendent may be included in earned compensation. However, for the value of maintenance to be included in the superintendent's earned compensation, a factual determination must be made by the

DeMoreo Reddick, Esquire  
January 25, 2019  
Page 3

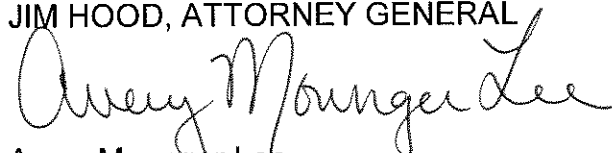
school board as to the value of the maintenance. Where the maintenance is not paid in the form of money, the value shall be fixed by the employing entity or, if in doubt, by the PERS Board of Trustees. Additionally, the school board should coordinate with PERS to determine that the proper amount of employer and employee contributions have been paid on the maintenance and the maintenance was reported to the PERS system as of June 30, 2013. If the requirements of Section 25-11-103(k)(viii) were met, then the value of the maintenance should be included in the superintendent's earned compensation.

If this office may be of any further assistance to you, please let us know.

Sincerely,

JIM HOOD, ATTORNEY GENERAL

By:



Avery Mounger Lee  
Special Assistant Attorney General

**OFFICIAL OPINION**