

OPPOSITION TESTIMONY BEFORE THE HOUSE AGING AND LONG TERM CARE COMMITTEE

ON HOUSE BILL 413

RICHARD L. ROSS

February 6, 2018

Chairman Arndt, Vice Chair Pelanda, Ranking Minority Member Howse, and members of the House Aging and Long Term Care Committee, thank you for this opportunity to speak.

My name is Richard Ross and I am from Morgan County. I earned my OPERS pension by being the Morgan County Law Librarian, Stockport Solicitor, Morgan County Prosecuting Attorney, and Chief Assistant Prosecuting Attorney. I was a special prosecutor in 13 counties. I have been an attorney for 41 years and was a prosecuting attorney for 26 years.

I am opposed to those portions of House Bill 413 which would change the present three per cent COLA for retirees as contained in Ohio Revised Code Section 145.323. The COLA is not a “true” COLA, for it is a three per cent increase of what was paid monthly in the first year after retirement. Thus, for someone who has been retired for 16 years, the increase is merely two per cent. The increase in health costs, including the reductions of the health savings accounts for retirees and the elimination of those accounts for the surviving spouses, has increased their cost of living far beyond the consumer price index.

Specifically, I am here today to remind this committee that the legislature has no legal right to change the benefits of those who have already retired. Section (A) of ORC 145.561 states that the granting of “a retirement allowance, annuity, pension, or other benefit to any person pursuant to action of the public employees retirement board vests a right in such person.” State ex rel. Cunat v. Trustees of Cleveland Police Relief & Pension Fund, 149 Ohio St. 477 (1948). In addition Section (B) specifically states that “the section does not apply to an increase made under section 145.323 of the Revised Code for a recipient whose benefit effective date is on or after the effective date of this amendment.” ORC 145.323 is the COLA statute for OPERS retirees. The effective date of the statute was January 7, 2013. Therefore, the right to receive the COLA for anyone who retired before January 7, 2013, is vested. It is a matter of contract that cannot be altered after the commencement of the contract (i.e., retirement). Article 2 Section 28 of the Ohio Constitution prohibits the General Assembly from passing “retroactive laws, or laws impairing the obligation of contracts.” This proposed legislation would do both. The Columbus Dispatch on January 30, 2018, had an opinion piece that the Oregon Supreme Court had declared a similar statute in that state that changed COLA for retirees as a violation of the retirees’ contract.

Case law affirms that this can only be altered if there is a financial emergency. Mascio v. Public Employees Retirement System of Ohio (U.S. Court of Appeals, Sixth Circuit No. 97-3314). The Article 1, Sec. 10 of the US Constitution provides that “(n)o state shall...pass any...law impairing the obligation of contracts.” (1) A contract exists between OPERS and a retiree. (2) The change in the COLA would impair that contract. (3) That impairment is substantial to each retiree. The only way this could be changed, stated the court, was if there was a legitimate and important public purpose. I submit that this would only be if there was a financial emergency. It is impossible to see a financial emergency when the OPERS pension and health funds each had investment returns of approximately fifteen per cent. Retirees are fully funded. The 30 year funding is in excess of eighty per cent. OPERS is the most soundly managed fund there is. There is no need for this legislation.

The Ohio Association of Public School Employees (OAPSE) has already filed a lawsuit here in Franklin County over SERS COLA freeze. If this legislation is passed, the state has bought another law suit.

Please vote against House Bill 413 in its present form as it would deprive OPERS retirees who retired prior to January 7, 2013 a vested part of their retirement benefits.