Questions and Answers from NIUAA’s Town Hall Meeting on November 16, 2016

What follows is a summary of questions and answers from the November 16, 2016, NIUAA Town Hall Meeting on legal issues affecting SUIRS employees and retirees. This summary is not intended to be a complete or verbatim transcript of the meeting. Rather, it is intended to be an accurate reflection of the essential points made at the meeting. In some instances, details on various issues such as critical dates or legal provisions have been added for the sake of precision and completeness. The answers given here are the views of John Carr, lawyer and lobbyist for the State Universities Annuitants Association (SUAA). Ultimately, only the courts can provide definitive answers to legal questions.

NIUAA Members who are retired or about to retire most frequently ask board members whether our 3% automatic annual increases (“COLAs”) are safe. In your opinion, can the State reduce this benefit?

No. The Illinois Supreme Court settled this issue in May of 2015 when it ruled that the so-called pension reform law (PA 98-0599) that reduced automatic annual increases was unconstitutional. Moreover, retirees are not part of any current legislative discussions on pension reform.

Governor Rauner has proposed a double retirement plan for employees. The current defined benefit plan would cover pensions earned up to a certain date. After that date, a defined contribution plan would start in which employees contribute 8% of their salaries and the State contributes 4% or 5%. Could the State legally implement such a pension plan?

An answer to the question depends on the status of employees. For Tier I employees, the answer is No unless the Illinois Constitution were changed to permit such a plan. For Tier II current employees and Tier III future employees, the answer is Maybe but only if the State’s defined contribution meets the IRS standard of the State’s paying as much as a private employer has to contribute to Social Security for its employees. [Note. At this point, John Carr strongly encouraged all employees to join SUAA/NIUAA as a way of protecting their benefits.]

Recently there is talk that the State might offer lump sum pension buyouts if employees agree to leave SUIRS. These lump sums might be 75% of what employees’ total pension payments would be over their lifetimes. If the State implemented such a plan, could it require SUIRS to make the lump sum payments out of its assets, thereby reducing the solvency of SUIRS?

At this point, lump sum pension buyouts are nothing more than hallway talk. In other words, no bill has even been drafted. If the State did move to offer lump sum buyouts, however, it would probably be legal if (a) individuals were free to accept or reject the buyouts and (b) if Illinois followed New York’s example and floated bonds to pay for the buyouts. Without full funding of SUIRS, it makes no sense for the State to ask SUIRS to pay for the pension buyouts.

Some employees are confused about the money purchase formula for calculating pensions. Some think this formula is no longer used. Others think the formula is still used but the rate of future earnings has been so dramatically reduced as to make the formula irrelevant. Could you please clarify the status of the money purchase formula?
For SURS participants hired after July 1, 2015, the money purchase formula can no longer be used. In contrast, the formula is still in effect for employees who were hired before that date. Part of the confusion over the money purchase formula might stem from the fact that the State unsuccessfully tried to eliminate this formula for all employees. Lastly, it should perhaps be noted that this particular provision of the pension code is one of the features that distinguishes SURS from the four other pension systems. [Note. The money purchase formula is regularly reviewed to determine if its assumptions about life expectancy and investment returns are actuarially sound. Recent reviews, for example, have led to lowered estimated returns and greater longevity which have resulted in lower pension amounts.]

For the past two years, some legislators have tried to eliminate college tuition waivers for the children of employees who worked at least 7 years in a state university. Thanks to SUAA/NIUAA lobbying efforts, those efforts were defeated. In your opinion, are college tuition waivers likely to be eliminated?

For current employees, college tuition waivers are a strong recruitment and retention benefit, especially for employees who are lower paid. Unfortunately, the State’s effort to eliminate waivers is very much alive. SUAA/NIUAA will continue to fight for the retention of this benefit.

In the Kanerva Case, the Illinois Supreme Court ruled that the State cannot make retirees with 20 or more years of service pay anything toward their health care premiums. Many retirees now worry that the State will impose dramatic increases in health care deductibles and co-pays. Is that possible?

It is possible but unlikely. CMS unilaterally tried to increase these costs by significant amounts, but our lawyers stopped that effort. The Illinois Legislature also tried to dramatically increase these charges, but the Kanerva ruling by the Illinois Supreme Court thwarted that effort. In any case, major increase in deductibles and co-pays cannot be imposed on the 6,000 or so retirees who agreed to take lower pensions in exchange for relatively fixed health care costs.

Speaking of health care, what about current employees? Could the State dramatically raise the costs of (a) premiums, (b) deductibles, and (c) co-pays for current employees?

Yes, the State could do this, but only if it were part of a collective bargaining agreement. [Note. Considerable discussion with audience participation ensued about employees who are and who are not covered by collective bargaining agreements. Consensus emerged that AFSCME typically negotiates health care costs for its members, with the same terms then imposed on employees who are not covered by collective bargaining agreements. If other unions negotiate collective bargaining agreements with health care provisions, those provisions govern employees covered by those contracts. Also see http://suaa.org/assets/pdf/2013MiniBriefing3.06.2013.pdf.]

To help increase state revenues, at least three public interest or watchdog groups have endorsed plans to tax pensions and other retirement income such as IRA distributions. Is the State likely to do this and would it be legal if it did so?

No, the State is not likely to do this—at least not in the next year or two. But that reluctance has more to do with the will of the legislators than the law. In other words, there is no legal impediment prohibiting the State from taxing retirement income at some point in the future as most other states already do.
Years ago, Newt Gingrich proposed changing federal law to allow states to declare bankruptcy. This idea is being floated again now as a way to allow states to significantly reduce their pension payments. If Illinois could declare bankruptcy, for example, would the Illinois Constitution still protect our pensions?

This is a complicated legal question. If federal law were changed to permit states to declare bankruptcy and the law was found to be legal by the courts, then federal law would prevail over state laws. If Illinois actually declared bankruptcy in this scenario, a federal judge would decide the amount of pensions that would be paid to individuals. In the case of Detroit’s bankruptcy, for example, retirees did fairly well in receiving almost 93% of their pensions.

Answering this question becomes more complicated, however, because of the “contract clause.” Specifically, Section 10 of Article 1 of the U.S. Constitution reads in part: “No State shall pass any . . . Law impairing the Obligation of Contracts . . .” In other words, there is an important legal question of whether the U.S. Constitution would have to be amended as well as having the federal bankruptcy law changed to allow Illinois to renege on its pension obligations.

The principle of “consideration” says some employee benefits can be reduced if others are increased. One such proposal gives employees a choice. One option retains the 3% automatic annual increases, but bases final pension amounts on current salaries. The other option bases final pension amounts on the last four years of earnings, but limits annual increases to half the rate of inflation or 3% whichever is less. Would it be legal for the State to force current employees to make this difficult choice?

No, my opinion is that the State could not force employees to make this type of choice. The principle of consideration, for example, requires that the tradeoffs have to be fair or of equal value. There is also a question of whether the affected parties have to agree to the tradeoffs or whether the courts could impose them. Moreover, I am of the opinion that one of the choices offered to employees would have to be to “just keep whatever they presently have.”

Because the State is so far behind in payments to health care providers, some employees and retirees not covered by Medicare report they are being denied services or asked to pay for them in advance. Is it legal for the State to put employees and retirees in situations where their benefits are really denied?

Yes, it is probably legal for the State to delay but not to deny health care benefits. At the same time, the Executive Director of SUAA (Linda Brookhart) has had some success in getting the Comptroller (Leslie Munger) to pay for health care services that pose an extreme hardship (i.e., $10,000 or more) on individuals who have to pay the anticipated costs out of their own pockets before receiving health care services.

Legislation has been proposed that limits return-to-work compensation to $2,000 per month by forcing individuals to forfeit pension amounts equal to any compensation that exceeds $2,000. Would this actually be legal?

No. The “pension protection clause” (Article XIII, Section V) of the Illinois Constitution would clearly treat this as diminishment of a protected benefit that cannot be reduced. At the same
time, however, the State could limit the amount of return-to-work compensation that a retiree can collect as it already has in the case of the “40% rule.”

To reduce the costs of future pensions, some people have argued that the State should pass a law that employee raises cannot exceed the rate of inflation. In your opinion, is the State likely to pass such a law and would it be legal if it did?

Yes, the State could pass such a law and it would be legal if it did so. Lobbying efforts by universities, school districts, and labor unions, however, would be so intense that the General Assembly and the Governor would be unlikely to pass such a law.

Given the State’s needs for new revenue to cover its unpaid pension and other obligations, some Springfield observers say the State should change its flat income tax to a progressive or graduated one. Is the State likely to do this and would it be legal if it did?

No, the state is not likely to do this in the near future. One reason I say this is because lawmakers have not even discussed this option. Another more compelling reason is that it would take a constitutional amendment to change from a flat tax to a progressive or graduated one. In this regard, please note that if the legislature were to initiate a constitutional amendment, 60% of the members of both the Illinois Senate and the Illinois House would have to agree to put the amendment up to a vote of Illinois citizens.

Previous questions asked about the legality of the State’s raising health care premiums, deductibles, and co-pays for employees and retirees. But what about the costs of health care for dependents? Could the State significantly increase the costs of providing this health care benefit?

No. We would argue that dependent health care is part of the benefit system that cannot be diminished or impaired. If significant increases in dependent health care costs were proposed, SUAA could mount a compelling legal challenge to those increases.