Retirement System Board of Trustees has construed statutory language governing member contributions to require that any locality electing to pay member contribution for its employees must do so for all employees. Attorney General defers to Board's interpretation. County must either discontinue payments of employee's share of county administrator’s Retirement System contribution or pay member contributions for all county employees.

Mr. James E. Cornwell Jr.
County Attorney for Craig County
May 27, 1999

You ask whether a county may pay an individual employee’s share of the contribution to the Virginia Retirement System (“Retirement System”) when the county does not pay the contributions for all employees.

You state that, pursuant to an employment contract between Craig County and the county administrator, the county has paid the employee’s share of the county administrator’s Retirement System contributions for approximately twelve years. You point out that the Attorney General issued an opinion in 1988 to the Commissioner of the Revenue for Craig County concluding that the payment of the county administrator’s insurance and retirement benefits did not violate state law. Notwithstanding this opinion, you state that in 1997 the deputy director of the Retirement System informed the county administrator that, under the Retirement System's interpretation of § 51.1-144(F) of the Code of Virginia, the county may not pay the member contribution of only one employee.

Section 51.1-144(A) provides generally that each member of the Retirement System is to "contribute five percent of his creditable compensation for each pay period," with the employer deducting the contribution from the employee’s pay. Section 51.1-144(F) permits any employer to "elect to pay an equivalent amount in lieu of all member contributions required of its employees. Such payments shall be credited to the members’ contribution account."

You assert that, because the language of § 51.1-144(F) grants a locality the authority to pay member contributions without limiting the authority granted a locality in other areas, the statute is clear and unambiguous and thus not subject to administrative interpretation.
view that, even if the statute is subject to administrative interpretation, the fact that the Retirement System accepted the county’s payments for twelve years indicates that the Retirement System interprets the statute to permit the payment of only one employee’s Retirement System contribution.

It is my opinion that, because § 51.1-144(F) does not expressly authorize a county to pay the member contribution for one employee, the language in the statute does not clearly and unambiguously resolve the question you present. Accordingly, the proper officers of the Retirement System have the authority to interpret the statute. It is my understanding that the Retirement System interprets § 51.1-144(F) to require that any locality that elects to pay the member contribution for its employees must do so for all employees.

A standard rule of statutory construction is that the interpretation given a statute by the public officials charged with its administration is entitled to great weight and, unless clearly wrong, will not be disturbed. The interpretation of § 51.1-144(F) adopted by the Retirement System cannot be said to be clearly wrong. The statute contains no language permitting an employer to pay the member contribution for one employee or for selected employees. In addition, the use of the word “all” in “all member contributions” and the choice of the plural in the language “all member contributions,” “employees,” and “members’ contribution account” support the interpretation that the General Assembly intended to grant an employer only the option to make the payments for all of its employees who are members of the Retirement System.

Accordingly, notwithstanding any implications in the 1988 opinion to the contrary, I defer to the interpretation given § 51.1-144(F) by the Retirement System. The county must either discontinue the payments of the employee’s share of the county administrator’s Retirement System contribution or pay the member contributions for all county employees.


2 Section 15.1-7.3 was recodified without substantive change in 1997 as § 15.2-1517. See 1997 Va. Acts ch. 587, at 976, 1078-79.


4 Id. at 182.

5 Id. at 181-82.

6 Section 2.1-118 requires that any request by a county attorney for an opinion from the Attorney General “shall itself be in the form of an opinion embodying a precise statement of all facts together with such attorney’s legal conclusions.”

7 Section 51.1-124.22(A)(8) (authorizing Retirement System Board of Trustees to make “determinations necessary to carry out the provisions of [Title 51.1]”).

“All” encompasses “every member,” and means “being more than one person.” Merriam Webster’s Collegiate Dictionary 29 (10th ed. 1996).

Section 51.1-144(F) (emphasis added).

You state in your letter that you do not address the implications of federal law on the payment of a single employee’s retirement benefits and, therefore, I express no opinion on any such implications.