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Can Kentucky Stop Nonprofits from Abandoning Pension Obligations?

The Kentucky Retirement System is appealing a judge's decision that allowed one of the employers in its membership to abandon the underfunded system as part of its bankruptcy restructuring.

A federal judge ruled on May 30 that Seven Counties Services, a health services provider, could leave the pension system because it qualified as a nonprofit corporation rather than a government entity.

Citing the 1963 federal Community Health Act, which was designed to begin the privatization of mental health services, the opinion said that Seven Counties was a result of the "metamorphosis from state-run mental health services to a community-based, private non-profit structure." The ruling could clear the way for other similarly financially strapped institutions across the state to do the same. The state has a total of 13 community mental health centers that could qualify as nonprofits and opt to leave the system.

The retirement system's board of trustees voted 12-0 on June 11 in a closed-door meeting to appeal the ruling. State lawmakers and Gov. Steve Beshear had publicly urged the board to do so in the weeks before the meeting.

Kentucky has the worst-funded retirement system in the country, holding roughly 23 percent of the money it has promised to pay its current workers and retirees in retirement benefits. That means the state system, not including police and fire employees and teachers, has roughly $8.7 billion in unfunded liabilities, according to the most recent actuarial report. About $91 million of that is attributed to Seven Counties and the retirement system would have to cover that cost if the agency is actually allowed to exit.

Some have said covering that $8.7 billion would drive up what state government employers across the state would have to put in annually to the pension fund to keep it solvent. By some estimates, governments would collectively spend more than 38 percent of their payroll costs next year on retiree payments alone. That's up from 5.9 percent in 2006.

Jim Carroll, co-founder of the 3,600-member Facebook group Kentucky Government Retirees, said his group is "gratified" that the retirement board has voted to appeal the Seven Counties Services bankruptcy ruling. "As stakeholders, we are pleased that the board had moved to protect the long-term viability of the financially troubled [retirement] fund," he said in an emailed statement.

But others are more skeptical, saying the state retirement system was already in a "death spiral" before the bankruptcy ruling. Chris Tobe, a Louisville-area pension investment consultant, noted that state employer contributions into the pension fund this year have collectively been only about half of what is actuarially recommended. That means the 23 percent funded ratio will likely sink lower after this year.

"The appeal is a desperate measure to try to prevent any of the other 12 mental health agencies

from jumping ship," Tobe said.

BY LIZ FARMER | JUNE 12, 2014

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