Urbana man was behind state pension clause in ’70

Illinois public employees concerned about having their pension benefits cut have nothing to worry about, thanks to the 1970 Illinois Constitution and to the late Henry Green of Urbana.

That’s the opinion of Eric Madlar, the chief legal counsel to Illinois Senate President John Cullerton, who has written a persuasive analysis on why the state cannot renege on the pension promise it makes in Article XIII, Section 5 of the Constitution. That article, known as the Pension Clause, says in part that “membership in any pension or retirement system of the State ... shall be an enforceable contractual relationship, the benefits of which cannot be diminished or impaired.”

Some lawyers and legislators have suggested that the debt-ridden state could slash billions of dollars in costs by reducing pension benefits to public employees. But Madlar, using letters and other documents preserved by Green, who was an influential delegate to the 1969-70 constitutional convention, found that it clearly was the intent of the convention delegates to lock the state into providing the benefits.

Green was a farm manager and a farm operator who later went into banking, founding the old American National Bank in Champaign. He also was on the steering committee that helped found Parkland College and was its first director of development.

He admitted that he promoted the pension promise, which was based on a 1938 amendment to the New York State Constitution, because of concerns raised by university employees who had lost "faith in the ability of state and local governments to make benefits payments.”

In introducing the Pension Clause to delegates on July 21, 1970, Green said it was intended to "put the General Assembly on notice that these memberships are enforceable contracts and that they shall not be diminished or impaired.”

His floor speech was nearly identical to a memo he had received from Ed Gibala, the director of the State Universities Retirement System.

At one point Green told the delegates, "What we are trying to merely say is that if you mandate the public employees in the state of Illinois to put in their 5 percent or 8 percent or whatever it may be monthly, and you say when you employ these people, "Now if you do this, when you reach 65 you will receive $287 a month,' that is in fact what you will get.”

In an interview last week, Madlar said there’s no question the convention delegates intended to guarantee the pension benefits. "Long story short on this, in my view, is that they knew what they were getting into. They were warned about the problem the language could cause, and that the Legislature would have its hands tied. And they rejected efforts to change it," Madlar said. "They wanted to guarantee that people would get paid what they were due.”

The Pension Clause was adopted by delegates that day, and voters ratified the entire Constitution in December 1970.

Madlar’s research indicates that underfunding public employee pensions is a long-standing, bipartisan Illinois tradition, predating all current legislators by decades.

In Henry Green’s papers, which were donated to the University of Illinois, Madlar found another memo from Gibala that expressed con-

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cern about pension underfunding. (Like Henry Green, Gibala lived in Urbana; both died in 2005).

Gibala’s memo noted that between 1946 and 1969, “the unfunded accrued liabilities of public employee pension plans in Illinois increased from about $359 million to almost $2.5 billion. The unfunded accrued liabilities are real and not theoretical obligations based upon service already rendered to the taxpayers of the state of Illinois,” Gibala wrote.

“Despite consistent warnings from the Illinois Public Employees Pension Laws Commission that current budgeting of pension costs is necessary to insure financial stability of the funds under varying economic conditions, the General Assembly has failed to meet its commitment to finance the pension obligations on a sound basis,” he continued.

In 1967, legislators committed to providing enough pension funding to stabilize unfunded accrued liabilities at that year’s level.

But they reneged on the pledge a year later, and according to Gibala “the appropriations to this system were about $67 million less than the minimum required.”

Today the five state retirement systems are in even worse shape, according to a recent estimate by the state Commission on Government Forecasting and Accountability. Based upon the combined market value of their assets, the five systems have a total unfunded liability of $85.6 billion.

Madiar said he enjoyed writing the piece and hopes to get it published as a law review article.

He began researching the issue last spring at Cullerton’s request, and spent an entire day at the UI Library in August going through Green’s papers.

“This thing was pretty cool because of the tie it has with Champaign and the university employees,” Madiar said.

“For me what was so much fun about it was that it had a good narrative.”

Oddly, in a 1967 interview for an oral history project at Sangamon State University, Green talked modestly about the achievements of the constitutional convention plus his own memories. He made no mention of the Pension Clause, which is still being debated 40 years later.

“I am not a student of the Constitution,” he said. “You know, I kind of took it as an assignment. I did it, you know, we had a final exam and I went off to do something else.”