

STATE EMPLOYEES' RETIREMENT SYSTEM: A member of the legislature
LEGISLATURE: who has served six or more
RETIREMENT: years as a member of the Gen-
RESIGNATION: eral Assembly and who meets
the conditions for retirement
at or after normal retirement
age is entitled to receive credit in calculating his retirement an-
nuity for having served in a biennial assembly from which he has
resigned.

OPINION NO. 133

May 18, 1967

Mr. Edwin M. Bode, Secretary
State Employees' Retirement System
State of Missouri
P. O. Box 209
Jefferson City, Missouri



Dear Mr. Bode:

This is in reply to your recent request for an official opinion from this office wherein you have stated in part as follows:

"What portion of a biennial assembly does a member of the Legislature have to serve in order to receive credit for that term for the purposes of retirement benefits under Section 104.390, RSMo Cum. Supp 1965?"

"In the particular case under inquiry, the member has served three full terms in the General Assembly. He has now been elected to and has commenced to serve a fourth term.

"He is considering resigning from the General Assembly. If he does so prior to the end of the current biennial session, will he receive credit for having 'served in' this assembly for retirement purposes.?"

In determining the amount of retirement annuity for a member of the General Assembly, Section 104.390, Missouri Revised Statutes Cumulative Supplement 1965, states as follows:

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" * * * the minimum annuity of any member who has served six or more years as a member of the general assembly and who meets the conditions for retirement at or after normal retirement age shall consist of monthly payments made at the rate of twenty-five dollars multiplied by the number of biennial assemblies in which he has served; * * * "

The primary rule in the construction of a statute is to ascertain the lawmaker's intent from the words used, if possible, and to put upon the language of the legislature, honestly and faithfully, its plain and rational meaning and promote its object. *Browder v. Milla*, 296 S.W.2d 502.

An analysis of the statute reveals that as a condition precedent to a member being eligible for retirement benefits, he must serve a definite and fixed period of time of six years in the General Assembly. However, after expressly stating this condition, no reference is made in the statute as to the length of time a member must serve in a particular biennial assembly in calculating his retirement benefits. It is our opinion that the silence of the legislature on this issue was "intentional".

Certainly a plain interpretation of the language in question; "number of biennial assemblies in which he has served," raises no inference that a member must serve the full period that a legislative assembly is in legal existence in order to qualify for having served in such assembly. The General Assembly is presumed to have intended what it has stated directly and unambiguously, and one may not, under the guise of construction, add to or take from the clear and definite terms of a statute. *State v. Pilkinton*, 310 S.W.2d 304.

In addition, a different conclusion would mean that an individual who was elected or appointed to fill a vacancy during the legal existence of a legislative assembly had not served as such in that biennial assembly for retirement purposes. We cannot believe that the legislature intended such an illogical result or one that is so contrary to the purpose of the statute. In ascertaining intention of the General Assembly, a court must give weight to the object sought to be accomplished, manifest purpose of act, and avoid if possible any construction which will lead to an absurd or unreasonable result. *State v. Tustin*, 322 S.W.2d 179.

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Finally in construing a statute and arriving at intent thereof, it is proper and helpful to consider its historical background. *Kansas City v. Travelers Ins. Co.*, 284 S.W.2d 874. The legislative history of the statute in question reveals that it was amended in 1961 by the legislature with the condition of membership in the General Assembly being expressly changed from eight years to six years. It is presumed that the legislature acted with full knowledge and information as to the subject matter of the statute and that if it had desired to change or alter the phrase "number of biennial assemblies in which he has served", it would have done so. Where an amendment leaves certain portions of the original act unchanged, such portions are continued in force with the same meaning and effect. *State ex rel. Klein v. Hughes*, 173 S.W.2d 877, 351 Mo. 651.

CONCLUSION

A member of the legislature who has served six or more years as a member of the General Assembly and who meets the conditions for retirement at or after normal retirement age is entitled to receive credit in calculating his retirement annuity for having served in a biennial assembly from which he has resigned.

The foregoing opinion, which I hereby approve, was prepared by my Assistant B. J. Jones.

Yours very truly,


NORMAN H. ANDERSON
Attorney General