

December 7, 1971

OPINION LETTER NO. 400
Answer by letter-Jones

Mr. Edwin M. Bode
Executive Secretary
Missouri State Employees'
Retirement System
State Capitol Building
Jefferson City, Missouri 65101



Dear Mr. Bode:

This letter is to acknowledge receipt of your request for an opinion from this office which reads in part as follows:

"Advice is requested in regard to a member who has ceased to be an employee of the State of Missouri sometime prior to his Normal Retirement Date. We are referring to a member at least sixty years of age who has accumulated fifteen or more years of creditable service or who has served six or more years as a member of the General Assembly, and in either case, has not been refunded his accumulated contributions to the Fund.

"Our Question Is:

1. Are those employees who are no longer employees of the State as referred to above, eligible to make the election for survivorship benefits under Section 104.395, RSMo 1969?"

In connection with the above, Section 104.395, RSMo 1969, reads as follows:

"In lieu of the normal annuity otherwise payable to him under section 104.390, a member

Mr. Edwin M. Bode

whose age at retirement is sixty years or more may elect in his application for retirement to receive the actuarial equivalent of his normal annuity in reduced monthly payments for life during retirement with the provision that upon his death the reduced normal annuity shall be continued throughout the life of and paid to his spouse. The election may be made only in the application for retirement and such application must be filed prior to the date on which the retirement of the member is to be effective; provided that if either the member or the spouse nominated to receive the survivorship payments dies before the effective date of retirement, the election shall not be effective; except that if the member dies after attaining age sixty and before retirement his spouse, if named as his beneficiary, may elect to receive either the reduced survivorship benefits under this section calculated as if the member had retired as of the date of his death or a payment of his accumulated contributions."

The assumption is made that the opinion request refers to an individual who is not presently employed by the state; and who does not reenter state employment in the future.

In Opinion Letter No. 22, Bode, 4-26-71 (copy enclosed), it was held that the amount of retirement benefits due a member of the retirement system who had ceased to be an employee of the state sometime prior to his normal retirement date, but was at least sixty years of age and had accumulated fifteen or more years of creditable service or served six or more years as a member of the General Assembly, and had not been refunded his accumulated contributions to the fund, were determined under the law in effect at the time the member ceased to be an employee of the state. The reasoning of the opinion was in accordance with the decision in State ex rel. Breshears v. Missouri State Employees' Retirement System, 362 S.W.2d 571 (Mo. banc 1962). In this case, it was held by the Supreme Court of Missouri sitting en banc, that a 1961 amendment to a 1957 statute permitting payment of increased benefits to retired members (emphasis ours) of the Missouri State Employees' Retirement System would take a portion of the fund existing when the amendment was passed to pay the increase and would impair a contract with active members in violation of Section 13, Article I of the Missouri Constitution.

It is submitted that the factual situation as presented is distinguishable from the Breshears case. It is to be noted that Section 104.395, RSMo, provides that a member may elect in his application for retirement to receive the "actuarial equivalent" of

Mr. Edwin M. Bode

his normal annuity. In this regard, the term "actuarial equivalent" is defined in subsection 2 of Section 104.010, RSMo 1969, as follows:

"'Actuarial equivalent', a benefit which, when computed upon the basis of actuarial tables and interest, is equal in value to a certain amount or other benefit;"

In addition, the following comment is made by the actuarial consultant to the Missouri State Employees' Retirement System in a letter to this office on November 16, 1971:

"The amount of benefit paid to a member retiring under the normal form of annuity, that is, the benefit payable to him during his lifetime with the minimum return of his accumulated contributions at retirement, is determined by his service and his average compensation. This benefit in the amount of X dollars a month has a value. When a retiring member elects the survivor option, the monthly benefit is reduced by the application of a factor which is based on the member's age and sex, and the age of the spouse. The resulting amount of monthly benefit payable to the member during his lifetime with the same amount continued to the surviving spouse during her lifetime has the same value, at retirement, as the amount paid to the member under the normal form.

"The factor which is applied has been calculated by us to reflect the actuarial tables and interest assumption approved by the Board."

As the result of the above, it is our view that under Section 104.395, RSMo, whether an individual retires at five-sixths of one percent or one percent, the individual will only receive the actuarial equivalent of his normal annuity which has previously been calculated by the actuary if he elects the option, and that the rights of present members would not be infringed. It is, therefore, our opinion that those employees who are no longer employees of the state, as referred to above, are eligible to make the election for survivor's benefits under Section 104.395, RSMo.

Yours very truly,

JOHN C. DANFORTH
Attorney General

Enclosure Op. No. 22
4-26-71, Bode