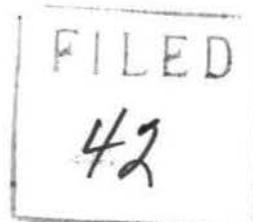


May 12, 1972

OPINION LETTER NO. 42
Answer by letter-Jones

Mr. G. L. Donahoe, Executive Secretary
The Public School Retirement
System of Missouri
Post Office Box 268
Jefferson City, Missouri 65101



Dear Mr. Donahoe:

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

"Does the Board of Trustees of The Public School Retirement System of Missouri have the authority, or power, to adopt regulations which will permit the retirement system to receive contributions for a member who is on leave of absence from his teaching position, with compensation from the employer for the period spent on leave; and is the system authorized to allow membership service credit for the time spent on leave for which contributions are remitted by the employer?"

Subsection 1 of Section 169.050, RSMo 1969, defines members of the system as follows:

". . . all employees as herein defined of districts included in the retirement system thereby created shall be members of the system by virtue of their employment."

Subsection 6 of Section 169.010, RSMo 1969, defines "employee" as being synonymous with the term "teacher." The word "teacher"

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is defined in part in subsection 16 of Section 169.010, RSMo, as follows:

"'Teacher' shall mean any teacher, teacher-secretary, substitute teacher, supervisor, principal, supervising principal, superintendent or assistant superintendent, school nurse, or librarian who shall teach or be employed by any public school, state college or state teachers' college on a full-time basis and who shall be duly certificated under the law governing the certification of teachers; . . ."

In addition, the word "employer" is defined in subsection 7 of Section 169.010, RSMo, as follows:

"'Employer' shall mean the district that makes payment directly to the teacher or employee for his services;"

Subsection 1 of Section 169.030, RSMo 1969, indicates that contributions shall be made in equal amounts by "members of the system and their employers." Subsection 10 of Section 169.020, RSMo 1969, defines "membership service" as service rendered by a member of the retirement system after the service becomes operative. Finally, the board is granted authority to adopt rules and regulations by subsection 14 of Section 169.020, RSMo, which provides:

"Subject to the limitations of sections 169.010 to 169.130, the board of trustees shall formulate and adopt rules and regulations for the government of its own proceedings and for the administration of the retirement system."

As is indicated, the power of the board to adopt rules and regulations is limited to the extent that a statutory provision cannot be altered or changed by a rule or regulation.

In connection with the above, it was held in Attorney General Opinion No. 35, Gould, March 18, 1969, that public school boards may grant leaves of absence with pay to teachers for the purpose of study and professional improvement; and that the agreement to grant leaves must be incorporated in the written terms of the employment contract and must be in exchange for services actually rendered during the contract period and not a gratuity. In addition, it was further pointed out that contributions to the Public

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School Retirement System should be calculated during the teacher's leave of absence in the same manner as contributions are calculated during periods of actual service (copy of opinion attached). It is our view that the same consideration is applicable to the matter that has been presented.

As a result of the foregoing, it is our opinion that the board of trustees of the Public School Retirement System has the authority to adopt a regulation which will permit the retirement system to receive contributions for a member who is on a leave of absence from his teaching position with compensation from the employer for the period spent on leave; and the system is authorized to allow membership service credit for the time spent on leave for which contributions are remitted by the employer, but the authority of the board to adopt a regulation is limited to the extent that a statutory provision cannot be altered or changed by said rule or regulation.

Yours very truly,

JOHN C. DANFORTH
Attorney General

Enclosure: Op. No. 35
3-18-69, Gould