

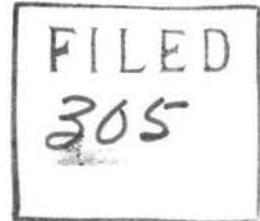
STATE EMPLOYEES:  
RETIREMENT:  
PENSIONS:

An employee of the State of Missouri who terminated such employment on July 31, 1957, then returned to employment by the state on January 13, 1969, who has since continuously remained in such employment, is not entitled to prior service credit for his state employment prior to July 31, 1957.

OPINION NO. 305

December 13, 1972

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



Dear Mr. Bode:

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

"Whether an employee of the State of Missouri who terminated such employment on July 31, 1957, then returned to employment by the state on January 13, 1969, and has remained in such employment continuously since, is entitled to prior service credit for his state employment prior to July 31, 1957, as a result of the enactment of S.B. 548, 76th General Assembly."

In your opinion request, it is also indicated that Missouri state payroll records reveal that the employee in question worked for the state continuously from April 2, 1941, to July 31, 1957, when he terminated that employment; that he returned to work for the state on January 13, 1969, and has been so employed continuously to the present.

The Missouri State Employees' Retirement System became effective August 29, 1957, under an Act of the 69th General Assembly. See Laws of Missouri, 1957, pages 707-718, and 880. At this time, subsection 1 of Section 104.340, RSMo, provided as follows:

"Any member of the system, on the first day of the first month following the effective

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date of this act shall be given credit for prior service with the state. All such service must be established to the satisfaction of the board."

Thus under the above statute, any employee who became a member on September 1, 1957, was entitled to credit for all service rendered prior to that date in any department, division or agency to which the system was applicable; provided that such service was established to the satisfaction of the board of trustees.

In 1959, House Bill No. 283 was passed by the 70th General Assembly and enacted into law. Laws of Missouri 1959. This was an Act to repeal Section 104.340, RSMo Supp. 1957 relating to credit for prior service granted members of the Missouri State Employees' Retirement System, and to enact in lieu thereof a new section relating to the same subject. Specifically, subsection 1 of Section 104.340, RSMo, provided as follows:

"Any member of the system, on the first day of the first month following the effective date of sections 104.310 to 104.550, shall be given credit for prior service with the state. All such service must be established to the satisfaction of the board."  
(Emphasis ours)

Thus under the above statute, the words "sections 104.310 to 104.550" were substituted for the words "this act." In this regard, Sections 104.310 to 104.550, RSMo were then, and still are, the statutory provisions dealing with the Retirement System. The only other change made by the legislature at this time was the addition of the words "or who became an employee of the Missouri state employment service during the period of federal control" in subsection 3 of the statute. There was no other legislation affecting Section 104.340, RSMo, until Senate Bill No. 548 was passed by the 76th General Assembly and which became effective on August 13, 1972.

Senate Bill No. 548 was an Act to repeal various sections relating to the Missouri State Employees' Retirement System, and to enact in lieu thereof sixteen new sections relating to the same subject. Section 104.340, RSMo 1969, was one of the sections repealed. However, subsection 1 of Section 104.340 as set forth in Senate Bill No. 548, provides as follows:

"Any member of the system, on the first day of the first month following the effective date of sections 104.310 to 104.550, shall

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be given credit for prior service with the state. All such service must be established to the satisfaction of the board."

Consequently, under the above statutory provisions, there were no changes in the language used by the General Assembly in subsection 1 of Section 104.340, RSMo. Instead, the legislature provided for a new paragraph 6 relating to employees of the Malcolm Bliss Mental Health Center.

In the factual situation that has been presented, it is indicated that the employee in question terminated his employment with the state on July 31, 1957. Under such circumstances it would be our view that the employee in question would not be entitled to receive prior service credit under subsection 1 of Section 104.340 when the Missouri State Employees' Retirement System was established for the reason that the individual was not employed by the state nor a member of the Retirement System on September 1, 1957. It is also our view that the repeal of subsection 1 of Section 104.340, RSMo by House Bill No. 283 in 1959 and the repeal of this section again in 1972 by Senate Bill No. 548 does not give the employee in question any new rights as to prior service credit. As previously noted, the only change in subsection 1 of Section 104.340, RSMo by House Bill No. 283 in 1959 was to substitute the words "sections 104.310 to 104.550" for the words "this act." In this regard, Sections 104.310 to 104.550, RSMo were then, and still are, the statutory provisions dealing with the Retirement System. In addition, there were no changes in the language of subsection 1 of Section 104.340, RSMo as a result of the passage of Senate Bill No. 548 in 1972. In this connection, Section 1.120, RSMo 1969 reads as follows:

"The provisions of any law or statute which is reenacted, amended or revised, so far as they are the same as those of a prior law, shall be construed as a continuation of such law and not as a new enactment."

Also, in the case of State ex rel. Klein v. Hughes, 173 S.W. 2d 877 (Mo. 1943), it was pointed out that the general rule is that when part of a statute is repealed by an amendatory act, the provisions retained are regarded as a continuation of the former law, whereas those omitted are treated as repealed. The presumption is that the legislature intended the unamended part of a statute to remain operative and effective as before. Consequently, it is our view that there have been no legislative changes in subsection 1 of Section 104.310, RSMo to indicate that the employee in question is entitled to prior service credit.

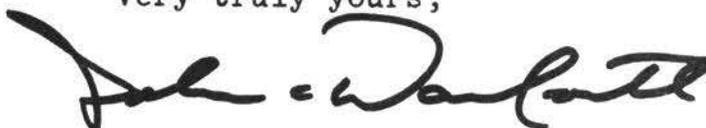
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CONCLUSION

It is therefore our opinion that an employee of the State of Missouri who terminated such employment on July 31, 1957, then returned to employment by the state on January 13, 1969, who has since continuously remained in such employment, is not entitled to prior service credit for his state employment prior to July 31, 1957.

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

Very truly yours,

A handwritten signature in black ink, appearing to read "John C. Danforth". The signature is written in a cursive style with a large, sweeping initial "J".

JOHN C. DANFORTH  
Attorney General