

STATE EMPLOYEES RETIREMENT SYSTEM:
MAGISTRATE CLERKS:
MAGISTRATES:
RETIREMENT:
PENSION:

1. Magistrate court clerks who are paid in whole or in part out of state appropriations are entitled to membership and prior membership credit in the Missouri State Employees Re-

tirement System. 2. Such magistrate court clerks are entitled to membership in the Missouri State Employees Retirement System on the full amount of their salaries.

OPINION NO. 115

September 12, 1973

Honorable William J. Cason
State Senator, District 31
215 East Franklin
Clinton, Missouri 64735



Dear Senator Cason:

This is to acknowledge receipt of your request for a formal opinion of this office which reads as follows:

- "1. As a result of a recent case, Hawkins v. Mo. State Employees Retirement System, decided by the Kansas City Court of Appeals on October 26, 1972, are magistrate clerks now members of the Missouri State Employees Retirement System?
- "2. If so, are they entitled to prior service credit, and to what extent?
- "3. Must any contributions be made to the system by these clerks?
- "4. Can credit for past service be transferred from this retirement system to another?
- "5. If they are members, are they entitled to credit for the full amount of salary paid to them from whatever source?"

This opinion is applicable only to magistrate clerks who are paid in whole or in part out of state appropriations and who are presently employed as magistrate clerks and who did not retire before January 8, 1973.

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We will consider your first two questions in regard to whether or not magistrate clerks are eligible for membership and prior membership credit as a result of the case of Hawkins v. Missouri State Employees' Retirement System, 487 S.W.2d 580 (Mo.Ct.App. at K.C. 1973) which became final on January 8, 1973. The Hawkins case dealt with the questions as to whether or not a court reporter was entitled to membership and prior membership credit in the Retirement System. In this regard, Section 485.060, RSMo 1969, provides that a court reporter shall receive an annual salary of twelve thousand dollars (\$12,000) and Section 485.065, RSMo 1969, provides of that salary, sixty-five hundred dollars (\$6,500) is to be paid out of the state treasury. In reaching its decision, the court determined whether or not an individual court reporter came within the definitions of "employee" and "department" as those terms are defined in subsections (15) and (11) of Section 104.310, RSMo 1969.

"(11) 'Department', any department, institution, board, commission, officer, court or any agency of the state government receiving state appropriations including allocated funds from the federal government and having power to certify payrolls authorizing payments of salary or wages against appropriations made by the federal government or the state legislature from any state fund, or against trusts or allocated funds held by the state treasurer;

* * *

"(15) 'Employee', any elective or appointive officer or employee of the state who is employed by a department and earns a salary or wage in a position normally requiring the actual performance by him of duties during not less than one thousand five hundred hours per year, including each member of the general assembly, but not including any employee who is covered under some other retirement or benefit fund to which the state is a contributor; except this definition shall not exclude any employee as defined herein who is covered only under the Federal Old Age and Survivors' Insurance Act, as amended. As used in sections 104.310 to 104.550, the term 'employee' shall include civilian employees of the Army National Guard or Air National Guard of this state who are employed pursuant to section 709 of title 32 of the United States Code and paid from federal appropriated funds;"

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The Kansas City Court of Appeals concluded that a court reporter was entitled to membership and prior membership credit in the Missouri State Employees Retirement System. The reasoning of the court was that a court reporter was an "employee" of the state as defined in subsection (15) of Section 104.310, RSMo 1969, and was employed by a "department" which receives state appropriations as defined in subsection (11) of Section 104.310, RSMo 1969.

In regard to the salaries of magistrate clerks, Section 483.485, RSMo 1969, provides in part as follows:

"In all counties each magistrate shall by an order duly made and entered of record appoint and fix the salary of a clerk of his court and may appoint such deputies and employees as may be necessary for the proper dispatch of the business of his court and fix their salaries at such sum as in his discretion may seem proper. The total salaries of clerk, deputies and other employees paid by the state shall in no event exceed the annual amount fixed in section 483.490 for clerk and deputy clerk hire of such courts; . . ."

Subsection 1 of Section 483.490, V.A.M.S., provides that the salaries of clerks provided for in Section 483.485 shall be paid by the state within certain limits according to population and assessed valuation of the counties upon requisition filed by judges of the various magistrate courts. Section 483.495, V.A.M.S., also provides that in each county of the state having more than one hundred twenty-five thousand and less than two hundred thousand inhabitants, the magistrates shall organize as a court with divisions. There shall be a chief clerk of the magistrate court who shall be elected by the qualified electors of the county and shall perform all duties and have all powers imposed by law upon clerks of magistrate courts generally.

It shall also be noted that the following appropriations for court reporters is found in Laws of Missouri 1969 at page 21:

"Section 4.235. To the Comptroller
For personal service and expenses
of court reporters of circuit
courts and courts of criminal
corrections
Personal Service and Expenses
From General Revenue. \$375,000"

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Similarly, the following appropriation for magistrate clerks is found in Laws of Missouri 1969 at page 21:

"Section 4.240. To the Comptroller
For the compensation and ex-
penses of magistrates and
compensation of magistrate
clerks
From General Revenue. \$2,486,500"

As a result of the foregoing statutory provisions, it is our view that the situation of magistrate clerks is essentially the same as that of court reporters. The reasoning of the Kansas City Court of Appeals in the Hawkins case then applies and a magistrate clerk is considered to be an "employee" of the state as defined in subsection (15) of Section 104.310, RSMo 1969, and is employed by a "department" which receives state appropriations as defined in subsection (11) of Section 104.310, RSMo 1969. We therefore conclude that a magistrate clerk is entitled to membership and prior membership credit in the Missouri State Employees Retirement System.

We next consider your fifth question which reads as follows:

"5. If they are members are they entitled to credit for the full amount of salary paid to them from whatever source?"

The above issue was also considered by the Kansas City Court of Appeals in the Hawkins case involving court reporters. In this regard, the definition of "compensation" in subsection (9) of Section 104.310, RSMo 1969, reads as follows:

"(9) 'Compensation', all salary and wages payable out of any state, federal, trust, or other funds to an employee for personal services performed for the state;"

In construing the above-statutory definition, the court of appeals determined that the matter of services for the state was the important factor and that the source from which the employee was paid should not be deemed controlling. Therefore, it was the opinion of the court of appeals that the definition was clear and unambiguous so as to require all of the court reporters' compensation to be considered for the purpose of computing retirement, even though part of their salary was paid out of state funds and another part was paid out of county funds. It is submitted that similar reasoning is applicable to magistrate clerks. Consequently, we conclude that magistrate clerks are entitled to membership in the Missouri State Employees Retirement System on the full amount of their statutory salary, whether paid out of state or county funds.

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We next consider your third question in regard to whether or not any contributions are required to be made to the Retirement System by magistrate clerks. We must decline to render an opinion on this issue at this time, for the reason that we consider this to be a policy question to be decided by the board of trustees of the Missouri State Employees Retirement System, and since this office is required by Section 104.520, RSMo 1969, to furnish legal services upon request to the Retirement System, we may be involved in litigation concerning this question.

Lastly, we consider your fourth question as to whether or not credit for past service can be transferred from the Missouri State Employees Retirement System to another retirement system? It is our view that the answer to this question would depend on the statutes governing the specific retirement system in question, and since we do not have sufficient information on this question, we can not rule on this issue at this time.

CONCLUSION

It is the opinion of this office that:

1. Magistrate court clerks who are paid in whole or in part out of state appropriations are entitled to membership and prior membership credit in the Missouri State Employees Retirement System.
2. Such magistrate court clerks are entitled to membership in the Missouri State Employees Retirement System on the full amount of their salaries.

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

Yours very truly,



JOHN C. DANFORTH
Attorney General