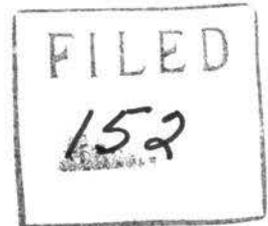


May 11, 1973

OPINION LETTER NO. 152  
Answer by letter-Houdek

Honorable William J. Esely  
State Senator, District 12  
Room 433, Capitol Building  
Jefferson City, Missouri 65101



Dear Senator Esely:

This opinion is in response to your request in which you ask the following:

"1. Can a person who has served not less than twelve years as a circuit judge, then retired under the provisions of Sec. 476.450, served as a special commissioner several years and resigned as such, his resignation to the Governor which was accepted, containing the provision that he might reapply at any future time for judicial retirement, and then appointed Probate & Magistrate Judge, and now serving as such, terminate his services as the latter judge and successfully reapply for retirement benefits and if so, be paid fifty percent of the salary for the highest court upon which he has served.

"2. In the event of the death of a retired judge under the next above circumstances leaving a qualified widow, would her benefits be based upon the services of her deceased husband as Probate and Magistrate Judge only, or upon his full twelve years services on both circuit and Probate courts, and at what rate."

Additionally, you have provided us with the following facts giving rise to your inquiry:

Honorable William J. Esely

"Judge Virgil C. Rose served as Judge of the Third Judicial Circuit of Missouri from January 2, 1939 until January 5, 1959, a twenty year period, then in 1967 upon reaching the age of sixty-five, applied for and received retirement under the then provisions of Sec. 476.450 until February 1, 1972, at which time having resigned to the Governor as a Special Commissioner with the provision that such resignation was without prejudice to again applying for benefits under the provisions of the judicial retirement system of Missouri, same was accepted by the Governor and Judge Rose was thereupon on February 1, 1972 appointed Judge of the Probate and Magistrate Court of Putnam County, Missouri and has since and now is serving as such Judge.

"The Judge has served actively after Sept. 3, 1970, (but was not in office on that date except as special commissioner).

"Since Feb. 1, 1972, the Judge has participated in and made regular contributions under the provisions of Sec. 476.525

Total combination service over 21 years	(Note 476.520)
Contributions deducted, Pro- bate & Magistrate,	476.570
Retirement Compensation, high- est for court on which re- tiree serves as full time judge	476.530
Survivors benefits	476.535"

The pertinent statutory provisions bearing on your questions are contained in Sections 476.515, RSMo Supp. 1971 et seq., which provides in pertinent part as follows:

"As used in sections 476.515 to 476.570, unless the context clearly indicates otherwise, the following terms mean:

(1) 'Beneficiary', an unremarried surviving spouse married to the deceased judge continuously for a period of at least two years immediately preceding his death and also on

Honorable William J. Esely

the day of the last termination of his employment as a judge, or if there is no surviving spouse eligible to receive benefits under sections 476.515 to 476.570, the term 'beneficiary' shall mean any unemancipated minor child of the deceased judge, who shall share in the benefits on an equal basis with all other beneficiaries;

(2) 'Benefit', a series of equal monthly payments payable during the life of a judge retiring under the provisions of sections 476.515 to 476.570 or payable to a beneficiary as provided in sections 476.515 to 476.570; all benefits paid under sections 476.515 to 476.570 in excess of any contributions made to the system by a judge shall be considered to be a part of the compensation provided a judge for his services;

\* \* \*

(4) 'Judge', any person who has served or is serving as a judge or commissioner of the supreme court or of the court of appeals, or as a judge of any circuit court, probate court, magistrate court, court of common pleas or court of criminal corrections of this state or as a justice of the peace;" Section 476.515

"Any person, sixty-five years of age or older, who has served in this state an aggregate of twelve years, continuously or otherwise, as a judge, and who, after September 3, 1970, ceased or ceases to hold office by reason of the expiration of his term, voluntary resignation, or retirement under the provisions of subsection 2 of section 27 of article V of the Constitution of Missouri may receive benefits as provided in sections 476.515 to 476.570. All judges required by the provisions of section 30 of article V of the constitution to retire at the age of seventy years shall retire upon reaching that age, and if they have served in this state an aggregate of twelve years, continuously or otherwise, as a judge, shall receive benefits as provided in sections 476.515 to 476.570. The twelve years requirement of this section may be fulfilled by service as

Honorable William J. Esely

judge in any of the courts covered, or by service in any combination as judge of such courts, totaling an aggregate of twelve years." Section 476.520

"The retirement compensation shall be equal to fifty percent of the compensation provided by law at the time of retirement for the judges of the highest court on which the retired judge served as a full-time judge. Retirement compensation shall be paid to the retired judge monthly during the remainder of his life." Section 476.530

"In the event a person who is serving as a judge as defined in section 476.515, or who has retired under the provisions of sections 476.515 to 476.570, dies, retirement compensation, in the amount equal to fifty percent of the amount of the retirement compensation provided in section 476.530 or 476.545 shall be paid in monthly installments to his beneficiary." Section 476.535

"Any judge who held office on or after September 3, 1970, and who is otherwise eligible, shall participate in the retirement system established by sections 476.515 to 476.570; except that, a judge holding office on September 3, 1970, shall have the option to elect to participate in the retirement system established by sections 476.450 through 476.510, RSMo 1969. The election shall be in writing on forms prescribed by the comptroller, shall be filed with him within sixty days after September 28, 1971, and shall be irrevocable. The provisions of sections 476.450 through 476.510, RSMo 1969, shall apply to all other persons qualifying thereunder." Section 476.570

This office held in an official opinion to John C. Vaughn dated October 28, 1971, that a judge who did not serve in office after the effective date of H.C.S.S.C.S.S.B. No. 132, 76th General Assembly, is not eligible for benefits under such bill.

Honorable William J. Esely

Thus, the following are prerequisites for retirement benefits provided in Sections 476.515 to 476.570, RSMo Supp. 1971: (1) sixty-five years of age or older; (2) an aggregate of twelve years service as a judge; (3) voluntary resignation or retirement from service as a judge after September 28, 1971, the effective date of the act. If the individual meets these stated requirements, he is then eligible for retirement.

The above opinion also held that there is no requirement that all twelve years of service be subsequent to the effective date of Sections 476.515 to 476.570 and the prior service as circuit judge may be credited against that requirement. Service as probate judge constitutes service as a judge under the definition found in Section 476.515(4), RSMo. Any voluntary resignation or retirement from present service would be after September 28, 1971, thus fulfilling the final requirement.

Section 476.530 provides for the computation of retirement compensation. In your inquiry you specify that the individual served as a circuit judge which is the highest court on which he served as a full-time judge. This service would set the level of compensation to be used in determining the amount to be paid. The salary for circuit judge in the circuit in which he served on the date of any future retirement from the office of probate judge would fix the amount to be used in determining the compensation.

It is thus our opinion that a judge with in excess of twelve years service on the circuit bench who has retired and served as a special commissioner, resigned that commission and been appointed and served as probate and magistrate judge subsequent to September 28, 1971, may terminate his service by voluntary resignation or retirement and successfully apply for benefits as provided for in Sections 476.515 to 476.570 and be paid fifty percent of the salary for a circuit judge of the circuit in which he served on the date of his retirement from the probate court.

Your second question is answered by the provisions of Section 476.535, RSMo Supp. 1971, which provides that the qualified widow's benefits would be fifty percent of those provided for by Section 476.530, RSMo Supp. 1971. As we have held that the judge's retirement benefits under that section would be fifty percent of the salary for circuit judge in the circuit in which he served on the date of his retirement from the probate court, the qualified widow's benefit would thus be twenty-five percent of the salary of such circuit judge on the date of the judge's retirement from the probate court.

It is the view of this office with respect to Sections 476.515 to 476.570 relating to the retirement of judges that:

Honorable William J. Esely

1. A judge with more than twelve year's service on the circuit bench who has retired and served as a special commissioner, resigned that commission and been appointed and served as probate judge subsequent to September 28, 1971, may terminate his service by voluntary resignation or retirement and successfully apply for benefits as provided for in Sections 476.515 to 476.570 and be paid fifty percent of the salary for circuit judge in the circuit in which he served on the date of his retirement from the probate court.

2. In the event of the death of a retired judge under the next above circumstances, a qualified widow would be entitled to benefits in the amount of fifty percent of fifty percent of the salary of such circuit judge on the date of the deceased judge's retirement from the probate court.

Yours very truly,

JOHN C. DANFORTH  
Attorney General