

COUNTIES: A member of the County
COUNTY OFFICIALS: Employees' Retirement System
COUNTY EMPLOYEES' RETIREMENT SYSTEM: who is receiving retirement
RETIREMENT: benefits from the system is not
an "active member" as that term
is used in Section 50.1130, RSMo 1994, and is not entitled to the death benefit
provided by that section.

June 10, 1997

OPINION NO. 86-97

J. Ronald Carrier
Greene County Prosecuting Attorney
1010 Boonville
Springfield, Missouri 65802

Dear Mr. Carrier:

This opinion is in response to your question concerning the County Employees' Retirement System. Your question asks:

Do Sections 50.1000 through 50.1200, RSMo, allow the County Employees' Retirement Fund Board to require an eligible retiring member to waive his right to the death benefit provided by Section 50.1130, RSMo?

The statutes creating and controlling the County Employees' Retirement System ("CERS") are found at Sections 50.1000 through 50.1200, RSMo 1994 and Supp. 1995. Section 50.1130, RSMo 1994, states:

50.1130. Death benefit.—A death benefit of ten thousand dollars shall be paid to the designated beneficiary of every active member upon his death or to his estate if there is no designated beneficiary. [Emphasis added].

The issue is whether a member who is receiving retirement benefits from CERS is entitled to the death benefit provided by Section 50.1130. The death benefit, per the language of Section 50.1130, is for "active members." There is no statutory definition of "active member" for purposes of CERS; thus, we must discern its meaning.

"The meaning of a word must depend to some extent on the context in which it appears." Butler v. Mitchell-Hugeback, Inc., 895 S.W.2d 15, 19 (Mo. banc 1995). We must look at the statute as a whole and read it in its entirety. National Advertising Company v. Missouri State Highway and Transportation Commission, 862 S.W.2d 953, 954 (Mo. App. 1993). In addition to the use of the term "active member" in Section 50.1130, the term "retired member" appears in Sections 50.1000(1), 50.1060, and 50.1090, RSMo 1994. There is no definition of "retired member" in the CERS statutes. "We must presume that every word of a statute was included for a purpose and has meaning." Committee on Legislative Research of Missouri General Assembly v. Mitchell, 886 S.W.2d 662, 664 (Mo. App. 1994); accord Hyde Park Housing Partnership v. Director of Revenue, 850 S.W.2d 82, 84 (Mo. banc 1993). In accord with this rule, the terms "active" and "retired" preceding "member" must each be given meaning. An "active member" must be different than a "retired member." Section 50.1040.1, RSMo 1994, in discussing membership in CERS states: "Such membership shall continue as long as the person continues to be an employee [of the county], or receives benefits under the provisions of sections 50.1000 to 50.1200 [CERS], or elects to opt out of the system" A member who is receiving retirement benefits from CERS would be a "retired member." Therefore, an "active member" would not be receiving retirement benefits from CERS. The death benefit in Section 50.1130 is only applicable to an "active member" so the death benefit is not applicable to a member who is receiving retirement benefits from CERS.¹

There is further support for our determination that "active member" does not include a member receiving retirement benefits. "In construing a statute it is appropriate to take into consideration statutes involving similar or related subject matter when such statutes shed light upon the meaning of the statute being construed, even though the statutes are found in different chapters and were enacted at different times. [Citation omitted]. When the legislature enacts a statute referring to terms which have had other judicial or legislative meaning attached to them, the legislature is presumed to have acted with knowledge of that judicial or legislative action." Citizens Electric Corporation v. Director of Department of Revenue, 766 S.W.2d 450, 452 (Mo. banc 1989). Section 169.270, RSMo Supp. 1995, contains definitions pertinent to the retirement system in certain school districts. It contains the following definitions which may be helpful to our analysis:

¹To address your question, we need not address and therefore do not address whether a former employee of a county who is not presently receiving retirement benefits but will be entitled to retirement benefits at a later date is entitled to the death benefit provided by Section 50.1130.

169.270. Definitions.— Unless a different meaning is clearly required by the context, the following words and phrases as used in sections 169.270 to 169.400 shall have the following meanings:

* * *

- (14) **"Member"**, any person who is a regular employee after the retirement system has been established hereunder ("active member"), and any person who (i) was an active member, (ii) has vested retirement benefits hereunder, and (iii) is not receiving a retirement allowance hereunder ("inactive member");

* * *

- (18) **"Retirant"**, a former member receiving a retirement allowance hereunder;

* * *

Section 169.410, as amended by House Committee Substitute for Senate Committee Substitute No. 2 for Senate Bill No. 860, 88th General Assembly, Second Regular Session (1996), also contains definitions pertinent to a retirement system in certain other school districts. The following definitions may be helpful to our analysis:

169.410. The following words and phrases as used in sections 169.410 to 169.540, unless a different meaning is plainly required by the context, shall have the following meanings:

* * *

- (13) **"Member"**, a member of the retirement system defined as an:
(a) **"Active member"**, a member who is an employee; or
(b) **"Inactive member"**, a member who is not an employee;

* * *

- (17) **"Retirant" or "retired member"**, a former member receiving a retirement allowance or optional retirement allowance or other benefit;

* * *

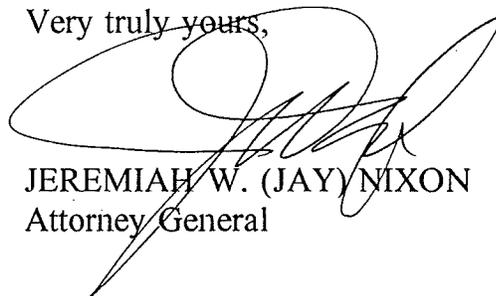
In each of these other retirement systems, an "active member" is defined so as to not include those persons receiving retirement benefits from the retirement system.

The specific question you pose is whether Sections 50.1000 through 50.1200 allow CERS to require an eligible retiring member to waive his right to the death benefit provided by Section 50.1130. We have already concluded that the death benefit in Section 50.1130 is not applicable to a member who is receiving retirement benefits from CERS. Whether a member who receives retirement benefits from CERS has waived his right to the death benefit is irrelevant, because under Section 50.1130 the death benefit is not applicable to a member who is receiving retirement benefits.

CONCLUSION

It is the opinion of this office that a member of the County Employees' Retirement System who is receiving retirement benefits from the system is not an "active member" as that term is used in Section 50.1130, RSMo 1994, and is not entitled to the death benefit provided by that section.²

Very truly yours,



JEREMIAH W. (JAY) NIXON
Attorney General

²The Code of State Regulations contains the following definition for "active member" for purposes of the County Employees' Retirement System:

16 CSR 50-2.010 Definitions

(1) Active member. A full-time or part-time employee who has elected to participate in the County Employees' Retirement Fund, who is employed by a county and who is not retired.

The conclusion reached in this opinion is consistent with this rule.