

SCHOOLS: Benefits for teachers in St. Louis. Act can include requirement that teacher reside in St. Louis during time required for obtaining pension; not necessary to pass amendment to the Constitution for legislative act to be valid for teachers only in St. Louis. March 27, 1941

3-28

Honorable C. T. Watson  
State Senator  
Jefferson City, Missouri



Dear Senator Watson:

You have referred to this department Senate Bill No. 47 relating to an act providing for the creation, maintenance and administration of a Public School Retirement System in all school districts of the state which may have a population of 700,000, or more, inhabitants.

You also enclose Senate Bills Nos. 48 and 49. We assume that No. 48 attempts to prevent or overcome a conflict which might have occurred by the passage of Senate Bill No. 47. Senate Bill No. 49 repeals Sections 9569-9577, inclusive. It appears that Senate Bill No. 47 is similar in purport to the provisions of Section 9569-9577, inclusive, but is much broader in detail, and much more definite.

You desire to know in the first instance whether a proviso or an amendment can be added to Senate Bill No. 47 to the effect that no teacher may participate in the benefits or in the retirement program, unless said teacher resides within the corporate limits of the city of St. Louis. Due to the fact that the act will only apply to cities of 700,000 or more, it is obvious that it is only applicable at the present time to the city of St. Louis. The question arises as to whether or not the proposed amendment to Senate Bill No. 47, relating to the residence of the teachers, is a reasonable condition precedent for a teacher participating in the benefits. The General Assembly has always placed certain qualifications or conditions necessary for a beneficiary to meet before obtaining benefits under other

pension laws.

In the recent decision of Ben Howlett, Respondent, vs. State Social Security Commission, Appellant, No. 37518, as yet unpublished, the Court holds in effect that the legislature can impose the conditions and qualifications upon persons applying for Old Age Assistance as long as such conditions are reasonable. It further holds to the effect that one class of pensioners may be excluded and as long as the classification is not arbitrary and all in a given class are not discriminated against, such a law is constitutional.

In the decision of United States vs. Scott 25 Fed. Rep. 470, in referring to a similiar question, the Court said,

"Now, applying that rule to this case, we find that our pension acts give pensions to certain persons under given conditions exactly defined. Both as to the particular persons entitled and the particular circumstances giving the right to a pension, the laws are very precise and they constitute a system of regulations for the whole subject."

We think the proposed amendment relating to the residential requirements of a teacher are not unreasonable or arbitrary, and this amendment would be legal. Further argument might be advanced that the hiring of teachers from year to year comes within the duties of the school board. In determining the qualifications of prospective teachers it has authority, among other qualifications, to demand that the teacher reside in the city of St. Louis and, in fact, it would not invalidate the contract to include such a requirement within it.

Sections 9569-9577, inclusive, have never been passed upon by our courts. They do not in reality deal strictly

with pensions in the sense that they are gifts or gratuities as in the case of old age assistance. Nor do we think Senate Bill No. 47, strictly speaking, is a pension bill. It is similar in nature to workmen's unemployment compensation insurance and does not violate the provisions of Section 47 of Article IV of the Constitution of Missouri relating to "municipality not to lend credit or grant public money--pension firemen, etc.,-pensioning blind--pensioning or assistance to aged persons."

Section 47a of Article IV of the Constitution of Missouri provides as follows:

"Nothing in this Constitution contained shall be construed as prohibiting payments, from any public funds, into a fund or funds, for paying benefits, upon retirement, disability, or death, to persons employed and paid out of any public fund, for educational services, their beneficiaries, or their estates."

The above section, we think, enables the General Assembly to pass such an act as contemplated by Senate Bill No. 47. The only question arises as to whether or not the proposed act is a special or local law as defined by Section 53 of Article IV of the Constitution, which states in substance: "The General Assembly shall not pass any local or special law", and then sets forth thirty-three subdivisions enumerating laws which shall not be passed. Subsection 19 is as follows:

"Regulating the management of public schools, the building or repairing of schoolhouses and the raising of money for such purposes:"

The above subsection, of course, has no bearing on the subject

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matter as contained in Senate Bill No. 47. The only question arising as mentioned above is whether or not it is necessary for additional constitutional amendment to enable St. Louis to pass such an act. Bearing in mind the provisions of Section 47a, quoted supra, and the fact there are numerous holdings to the effect that there is no constitutional inhibition on the legislature enacting a law to apply to cities or counties containing a certain population when such laws meet other constitutional requirements, although at the time of their enactment they may apply but to one city. Cases bearing with this principle of law are State ex inf. vs. Southern 265 Mo. 575 and State ex rel. vs. St. Louis 318 Mo. 910. Bearing in mind that the proposed act contains a section to the effect that the act shall apply to all cities of 700,000 or more, we think that Senate Bill No. 47 is not a local or special law and hence does not violate the provisions of Section 53 of Article IV, and are of the further opinion that it will not be necessary for the people to vote another constitutional amendment permitting the city of St. Louis to provide for a Public School Retirement System. We assume that the contemplated amendment with reference to residence of teachers will apply during the time the teacher is actually engaged in teaching for the required time in order to qualify ultimately for retirement benefits, and will not include any provisions to the effect that after receiving the benefits the teacher will be compelled to reside within the city of St. Louis. We think any amendment to the act requiring residence after retiring and receiving the benefits would be unconstitutional.

Respectfully submitted,

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APPROVED:

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(Acting) Attorney General  
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