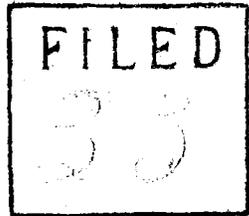


POLICE RETIREMENT SYSTEM:) Section 8, subsection (1), paragraph (a)
STATUTES:) of House Bill 307, not retroactive in
) its operation.



June 25, 1947

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Mr. F. D. Glore
Secretary
Police Retirement Board
Kansas City, Missouri

Dear Mr. Glore:

This is in reply to your letter of June 2, 1947, requesting an opinion of this department, which reads as follows:

"Under the Police Retirement Law known as House Bill 424, which passed the last previous session of the legislature and approved June 12, 1946, authorized the paymaster of the Board of Police Commissioners to deduct 4% of the salary of a policeman to be applied as his contribution to the Police Retirement Fund. I refer you to Section 8 of House Bill 424.

"House Bill 307 passed by the current state legislature and approved June 2, 1947, is an amendment to House Bill 424. I refer you to Section 8, sub-division 1 of that bill which provides:

"that such deductions shall not exceed \$10.00 during any one month."

"since June 15, 1946, deductions have been made on the basis of 4%, and we have in several instances deducted in excess of \$10.00 per month in keeping with the law. Now that the contribution of members is reduced to a sum not exceeding \$10.00 per month, is it proper and can we

refund to the members all in excess of \$10.00 per month that we have collected to this date?

"House Bill 424 is shown in the September pamphlet of the Missouri Revised Statutes Annotated at pages 158 to 167 both inclusive, and the particular section to which I refer is shown on page 165 of said pamphlet as section 9476.108, under the head of 'Deductions from Compensations.'

"I am handing herewith for your convenience House Bill 307 as it is not yet shown in the annotated or other statutes and refer you to Section 8, Paragraph 1, thereof.

"I would greatly appreciate an early reply to this letter as it is important that we make our records conform to your ruling."

Section 9476.108, Mo. R.S.A., of the law setting up a Police Retirement System in cities of 300,000 to 500,000, provides in part:

"(1) (a) The Board of Police Commissioners shall deduct or cause to be deducted from the compensation of each member until retirement an amount equal to 4% of said compensation. The sum so deducted shall be paid by the Board of Police Commissioners monthly or semi-monthly to the Retirement Board to be credited by him to the Pension Fund."

Section 8, subsection (1), paragraph (a) of House Bill 307 of the 64th General Assembly, with an emergency clause, amending the above section, is as follows:

"The Board of Police Commissioners shall deduct or cause to be deducted from the compensation of each member until retirement an amount equal to 4% of said compensation; provided, however, that such deduction shall not

exceed \$10 during any one month. The sum so deducted shall be paid by the Board of Police Commissioners monthly or semi-monthly to the Retirement Board to be credited by him to the Pension Fund."

The question for our consideration is whether that part of Section 8, subsection (1), paragraph (a), which provides "that such deduction shall not exceed \$10 during any one month," is retrospective in operation, thereby authorizing refunds to members who have contributed in excess of \$10 per month since the effective date of the Police Retirement System law. Retrospective laws are those which take away or impair vested rights acquired under existing laws, or create a new obligation, impose a new duty or attach a new disability in respect to transactions or considerations already past. It is a general rule of law that statutes are held to operate prospectively. In *Lucas v. Murphy*, 156 S. W. (2d) 686, the court said at page 690:

"* * * Regardless of the type of legislation under consideration, 'In the construction of statutes the uniform rule is that they must be held to operate prospectively only, unless the intent is clearly expressed that they shall act retrospectively, or the language of the statute admits of no other construction.' *Jamison v. Zausch*, 227 Mo. 406, 417, 126 S.W. 1023, 1027, 21 Ann. Cas. 1132; 2 *Cooley*, Taxation, Sec. 514, p. 1145; 2 *Lewis-Sutherland*, Statutory Construction, Sec. 642, p. 1157; Const. Mo. Art. 2, Sec. 15."

In *Home Indemnity Co. v. State of Missouri*, 78 Fed. (2d) 391, it was held, at page 394:

"A careful reading of the statute satisfies that its provisions were intended to operate prospectively. It is an elemental rule of construction that a statute ought not to be construed to

operate retrospectively in the absence of clear, strong, and imperative language commanding it. * * *"

And also, in the case of Western Pac. R. Corporation v. Baldwin, 89 Fed. (2d) 269, where the court said, at page 273:

"The question is certainly not free from doubt, but a general rule of statutory construction followed by the federal courts is 'that a retrospective operation will not be given to a statute which interferes with antecedent rights, or by which human action is regulated, unless such be the unequivocal and inflexible import of the terms, and the manifest intention of the legislature.'
* * *"

There is no intention expressed to construe the above amendatory section retrospectively. The only change in Section 8, subsection (1), paragraph (a), was the addition of the proviso limiting deductions or contributions to \$10 per month. In the absence of such intention and clear expression in the terms of the statute, we cannot give the retrospective construction. Ex post facto construction is as pernicious as ex post facto legislation (188 Fed. 991).

Amendatory acts are not given retrospective construction. However, the provisions of the original statute that are repeated in the amendatory statute, are to be considered as having been the law from the time they were first enacted. The Springfield Court of Appeals held in an opinion in Mott Store Co. v. St. Louis and San Francisco Railroad Co., 173 Mo. App. 189, which was later approved by the Supreme Court in 254 Mo. 654 (l. c. 196, Mo. App.):

"* * * Again, the law as announced in 36 Cyc. 1223, in dealing with the subject of amendatory acts is as follows:

"Unless required in express terms or by clear implication, an amendatory act will

not be given a retrospective construction. Proceedings instituted, orders made, and judgments rendered before the passage of the amendment will therefore not be affected by it, but will continue to be governed by the original statute. Where a statute, or a portion thereof, is amended by declaring that, as amended, it shall read as follows, and then setting forth the amended section in full, the provisions of the original statute that are repeated are to be considered as having been the law from the time they were first enacted, and the new provisions are to be understood as enacted at the time the amended act takes effect."

Section 8, subsection (1), paragraph (a) of House Bill 307, therefore dates back to the original enactment of the Police Retirement system law, except that portion providing "that such deduction shall not exceed \$10 during any one month," which took effect on the date of the approval of House Bill 307, June 23, 1947, and became operative from that date.

Conclusion

Therefore, it is the opinion of this department that the portion of Section 8, subsection (1), paragraph (a) of House Bill 307 of the 64th General Assembly, providing "that such deduction shall not exceed \$10 during any one month," is not retrospective in operation but is effective from the date of the approval of said House Bill 307, i. e., June 23, 1947. It is our further opinion that the Kansas City Police Retirement Board cannot refund to the members of the Kansas City Police Retirement System, that amount which was contributed pursuant to Section 9476.108, Mo. R.S.A., by each member in excess of \$10 per month.

Respectfully submitted,

APPROVED:

DAVID DONNELLY
Assistant Attorney General

J. E. TAYLOR
Attorney General