

SCHOOLS: State Librarian and employees of Missouri Library Commission not within provisions of H.B. 151, Laws 1945,
LIBRARY
COMMISSION: as amended, setting up Public School Retirement System for teachers.

October 31, 1949

Mr. G. L. Donahoe
Executive Secretary
Public School Retirement System
State Capitol Building
Jefferson City, Missouri



Dear Sir:

We hereby acknowledge receipt of your recent request for an opinion, which reads as follows:

"The Public School Retirement Act provides that on and after the effective date of the Act all 'employees' of districts included in the Retirement System shall be members of the System by virtue of their employment. The term 'employee' is synonymous with the term 'teacher' as used in the Act.

"'Teacher' is defined in Section 1 (6). This definition reads in part, as follows: '....and the state superintendent of public schools or commissioner of education, persons employed in the State Department of Education or by the State Board of Education in an executive capacity and other persons employed by said State Board of Education on a full-time basis who shall be duly certificated under the law governing the certification of teachers....'

"The statute creating the Missouri Library Commission, Section 14731, Laws of Missouri, 1945, reads as follows: 'The Missouri State Library shall be included in the Division of Higher Education in the State Department of Education, and shall be under the control of a State Librarian. The State Librarian of such division shall be appointed by the State Board of Education with the approval of the State Library Advisory Board. Such State Librarian shall be a graduate of an accredited college or university, and be graduated from an accredited library school, and must have library experience. The State

Librarian shall appoint the personnel in connection with the various activities of such division subject to the approval of the Commissioner of Education, and the State Library Advisory Board.'

"Is the State Librarian a member of the Retirement System by virtue of his employment if he is duly certificated under the law governing the certification of teachers?"

"Are the personnel in the employ of the State Library who are duly certificated under the law governing the certification of teachers members of the Retirement System by virtue of their employment?"

In disposing of the inquiries contained in the foregoing request for an opinion, it becomes necessary to examine House Bill No. 151, Laws of Missouri, 1945, page 1353, the legislative enactment which provided for the public school retirement system generally applicable throughout the State of Missouri. Nowhere in House Bill No. 151, supra, is there to be found any direct reference being made to the State Librarian as being an official within the scope of the retirement law. If he is to be brought within the law, his status as State Librarian must bear positive affinity to the term "employee" as it is used and defined in the retirement law.

House Bill No. 151, supra, has undergone several changes since its enactment, but in ruling the question at hand, we need only to refer to Section 1 of the original act as amended by House Bill No. 1010, Laws of Missouri, 1945, page 1383. Subsection (3) of Section 1, House Bill No. 151, supra, as amended, provides:

"(3) 'Employee' shall be synonymous with the term teacher as the same is herein-after defined."

Subsection (6) of Section 1, House Bill No. 151, supra, as amended, provides:

"(6) 'Teacher' shall mean any teacher, teacher-secretary, substitute teacher, supervisor, principal, supervising principal, superintendent or assistant superintendent, school nurse, or librarian who shall teach

or be employed by any public school on a full-time basis and who shall be duly certificated under the law governing the certification of teachers; any county superintendents of schools, assistant county superintendent of schools and those employed by county superintendents of schools upon a full-time basis and who shall be duly certificated under the law governing the certification of teachers; and the state superintendent of public schools or commissioner of education, persons employed in the State Department of Education or by the State Board of Education in an executive capacity and other persons employed by said State Board of Education on a full-time basis who shall be duly certificated under the law governing the certification of teachers, provided that this clause shall not be construed to include employes (employees) of the University of Missouri, the Teachers Colleges of the State, or Lincoln University."

At this juncture it is necessary to examine the law creating the Missouri Library Commission as it now exists, such law being found in Senate Bill No. 369, Laws of Missouri, 1945, page 1132. This present law results from the repeal of Article 2 of Chapter 110 of the Revised Statutes of Missouri, 1939, and the enactment of a new article to be known as Article 2, Chapter 110 of the Revised Statutes of Missouri, consisting of Sections 14731 to 14736a, inclusive. Section 14731 of this law provides that the Missouri State Library shall be included in the Division of Higher Education in the State Department of Education, and shall be under the control of a State Librarian appointed by the State Board of Education with the approval of the State Library Advisory Board. Section 14733 of this law provides for the State Library Advisory Board, two members thereof to be chosen by the Governor with the advice and consent of the Senate, who with the President of the State Board of Education, the Commissioner of Education and the Librarian of the State University shall compose the Board. This particular section provides that the Board shall serve in an advisory capacity to the State Librarian, who shall serve as Secretary to the Board. Section 14734 of this law sets forth in specific language certain powers and duties of the State Library Advisory Board as follows:

"The powers and duties of the State Library Advisory Board shall be as follows: make rules and regulations not inconsistent with

the law for its government and for the government of the State Library; give approval to the State Board of Education and Commissioner of Education on the appointment of the State Librarian; authorize the State Librarian to appoint such other assistants as may be necessary; and authorize the State Librarian to collect and present statistics and other information pertaining to libraries which shall be made available to other libraries in the state."

Section 14736a of this law vests authority in the State Librarian, with the assistance of the State Library Advisory Board, to administer all funds appropriated by the General Assembly for State Aid to Public Libraries, and the State Librarian with the State Library Advisory Board is authorized to make by-laws, rules and regulations touching the administration and allocation of such moneys.

Now, having briefly outlined the legislation setting up the Missouri Library Commission, it is necessary to determine whether such law, in its full, complete and effective operation, would cause the State Librarian, or any of the personnel necessary to the proper functioning of the Missouri Library Commission, to come within that portion of the definition ascribed to the word "teacher" found in Subsection (6) of Section 1, House Bill No. 151, supra, as amended, and reading as follows:

"(6) 'Teacher' shall mean * * * persons employed in the State Department of Education or by the State Board of Education in an executive capacity and other persons employed by said State Board of Education on a full-time basis who shall be duly certificated under the law governing the certification of teachers * * * ."

Is the State Librarian employed in the State Department of Education, or is he employed by the State Board of Education in an executive capacity? "When associated with the idea of service, the word employ means to hire or make use of the services of (Webster's New International Dictionary); and implies control by the employer over the means and manner of doing the work." Stein vs. Oil & Grease Company, 327 Mo. 804, 39 S.W. (2d) 345. The administrative autonomy of the Missouri Library Commission is very apparent from a reading of the law setting it up as an administrative body. If the lawmakers had intended

that the State Librarian and his assistants should be considered as "employees" of the State Department of Education or the State Board of Education, they would have so drafted the Missouri Library Commission law, but they have expressed no such intention. An intention quite to the contrary is evident when we consider the nature of powers and duties vested in the State Library Advisory Board, as well as the makeup of its personnel. The President of the State Board of Education and the State Commissioner of Education, by virtue of their office, become eligible and are appointed to membership on the State Library Advisory Board. They assist the State Librarian in administering the law creating the Missouri Library Commission. It is true that the State Librarian is appointed by the State Board of Education, but such appointment does not become effective until approval is given by the State Library Advisory Board, and this power of appointment by recommendation on the part of the State Board of Education contains no suggestion that the appointee, if approved, will then become the employee of the State Board of Education or State Department of Education, and not the employee of the State Library Advisory Board and consequently subject to its general orders and directions within the limits of powers conferred on the State Library Advisory Board.

Section 14731 of Senate Bill No. 369, supra, being the first section of the law creating the Missouri Library Commission, provides in part as follows:

"The Missouri State Library shall be included in the Division of Higher Education in the State Department of Education, and shall be under the control of a State Librarian. * * *"

The above clause serves merely as an aid in disclosing the legislative desires on a matter which is the subject of Section 12 of Article IV, Constitution of Missouri, 1945, which reads in part as follows:

" * * * Unless discontinued all present or future boards, bureaus, commissions and other agencies of the state exercising administrative or executive authority shall be assigned by the governor to the department to which their respective powers and duties are germane."

Having concluded that the State Librarian and other personnel of the Missouri Library Commission are not persons employed by the State Department of Education or by the State Board of Education, it is unnecessary to discuss the status of such persons under the law governing certification of teachers.

CONCLUSION

It is the opinion of this department that the State Librarian and other personnel of the Missouri Library Commission are not persons employed by the State Department of Education or by the State Board of Education within the definition of the words "employee" and "teacher" as those terms are defined in the law (House Bill No. 151, Laws of Missouri, 1945, page 1353, as amended), setting up a public school retirement system for teachers in Missouri, and consequently are not entitled to the benefits of such law.

Respectfully submitted,

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APPROVED:

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