

SCHOOLS:

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) Board of Trustees of the Retirement System can legally
) make payment of retirement allowances to a teacher who
) attained age seventy prior to July 1, 1952, who did not
) request a retirement allowance who served in a district
) included in the retirement system subsequent to July 1,
) 1952, and who is now requesting a retirement allowance;
) and to a teacher who attained age seventy prior to
) July 1, 1952, who requested a retirement allowance and
) received one or more monthly payments, who returned to
) teaching after July 1, 1952, and who is again requesting
) a retirement allowance.

May 22, 1953

Honorable G. L. Donahoe
Executive Secretary
Public School Retirement System of Missouri
Room 801, Jefferson Building
Jefferson City, Missouri

Dear Mr. Donahoe:

We render herewith our opinion based on your request
of May 5, which request reads as follows:

"It is provided in Section 169.050,
RS Mo 1949, that membership in the
retirement system shall be termina-
ted by retirement based on either
age or disability.

"Section 169.060(1), RS Mo 1949,
provides:

"'1. A member who is seventy years
of age or more one year after the
date the retirement system becomes
operative shall be retired as of that
date and shall be entitled to benefits,
as provided in sections 169.010 to
169.130, on the basis of his creditable
service. Thereafter, a member shall
be retired automatically on the first
day of July next following the school
year in which he reaches the age of
seventy years, and shall thereupon
be entitled to benefits, as provided in
sections 169.010 to 169.130, on the
basis of his creditable service; pro-
vided, however, the compulsory retire-
ment age shall not be effective for
the duration of World War II.'

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"In Section 169.070, the formula for determining retirement allowances is prefaced with the statement: 'The retirement allowance of a member whose age at retirement is 65 years or more shall be the sum of the following items.'

"It appears that in each instance where reference is made to a retirement allowance, it is indicated that a member is eligible for this allowance. We are unable to find any provision in the law for the payment of a retirement allowance to a person whose membership in the system was terminated before his retirement became effective.

* * * * *

"We are not able to find any specific provision of the law which is applicable in instances in which the teacher who was automatically retired under the provision of Section 169.060, RS Mo 1949, continued to serve in a district included in the retirement system after July 1, 1952, and who is now requesting a retirement allowance.

"We are requesting an official opinion which will state whether the Board of Trustees of the retirement system can legally make payment of retirement allowances under the following conditions:

"(1) To a teacher who attained age 70 prior to July 1, 1952, who did not request a retirement allowance, who served in a district included in the retirement system subsequent to July 1, 1952 and who is now requesting a retirement allowance.

"(2) To a teacher who attained age 70 prior to July 1, 1952, who requested a retirement allowance and received one or more monthly payments, who returned to teaching after July 1, 1952 and who is again requesting a retirement allowance."

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The law providing for the retirement system or that portion thereof relating to the time at which a member of the system becomes entitled to benefits, Section 169.060, RSMo 1949, reads in part as follows:

"* * * Thereafter, a member shall be retired automatically on the first day of July next following the school year in which he reaches the age of seventy years, and shall thereupon be entitled to benefits, as provided in sections 169.010 to 169.130, on the basis of his creditable service; * * *"

(Emphasis ours.)

In a previous opinion written to you from this office under date of May 29, 1952, it was held that a member of the retirement system, who had attained the compulsory retirement age of seventy, was not eligible for a retirement allowance so long as he continued to teach.

However, nothing is said in the law providing for the retirement system about a member's forfeiting his claim to benefits by his continued teaching after having reached the compulsory retirement age or by his delay in claiming benefits. Nor, have we discovered any judicial decision indicating that result. There is apparently no requirement that such benefits be paid or claimed immediately upon July 1 following the member's reaching the compulsory retirement age, but presumably could be claimed and paid at any time after that date when he meets the other conditions of retirement (i.e., his actual retirement from teaching -- see our opinion to you dated May 29, 1952). Therefore, we advise that in the first situation you have presented, wherein the member continues to teach after the date fixed by the law for compulsory retirement, the board of trustees is legally permitted to make benefit payments to the teacher who has made application for benefits after his actual retirement.

In the second situation presented in which a member of the system having arrived at the compulsory retirement age and having actually retired and received the benefits, then having resumed teaching, and who has now retired again and is again requesting a retirement allowance, our conclusion is that he also is entitled to a retirement allowance, and

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that the board of trustees may legally make payment to him.

There is no provision in the law that resumption of teaching after once having retired shall forfeit a teacher's claim for subsequent benefits -- although he would not be entitled to benefits during the time he was teaching. During the time he was employed in teaching after once having retired and received an allowance his right to benefits would be in a state of suspended animation, but would revive upon his ceasing to teach and again requesting the allowance.

CONCLUSION

It is the opinion of this office that the board of trustees of the retirement system can legally make payment of retirement allowances to a teacher who attained age seventy prior to July 1, 1952, who did not request a retirement allowance who served in a district included in the retirement system subsequent to July 1, 1952, and who is now requesting a retirement allowance; and to a teacher who attained age seventy prior to July 1, 1952, who requested a retirement allowance and received one or more monthly payments, who returned to teaching after July 1, 1952, and who is again requesting a retirement allowance.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. W. Don Kennedy.

Yours very truly,

JOHN M. DALTON
Attorney General

WDK/fh