

PUBLIC SCHOOL RETIREMENT SYSTEM:

Funds of system may be used to pay expenses of election on coming under federal social security.



January 17, 1956

Mr. Ward E. Barnes  
Chairman, Board of Trustees  
Public School Retirement System  
Room 801, Jefferson Building  
Jefferson City, Missouri

Dear Mr. Barnes:

We have received your request for an opinion of this office, which request reads as follows:

"Senate Committee Substitute for Senate Bill 186 as enacted by the 68th General Assembly provides in Section 105.355.1. in part as follows: 'Upon the request of the governing body of a retirement system except in the case of the state colleges, state teachers colleges and retirement systems covering only one school district and then upon the request of the governing body of the college or school district, the governor shall authorize a referendum, and designate an agency or individual to supervise its conduct, in accordance with the requirements of section 218(d)(3) of the Social Security Act, on the question of whether service in positions covered by a retirement system established by the state or by a political subdivision thereof should be excluded from or included under an agreement under sections 105.300 to 105.440 . . . .'

"The Board of Trustees of the Retirement System requested the Governor to authorize a referendum on the question of whether service in positions covered by the Public School Retirement System of Missouri should be excluded from or included under federal

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social security coverage. Governor Donnelly has authorized such a referendum, and I have been designated to supervise the conduct of the referendum.

"From inquiry, we are unable to find that funds were appropriated by the General Assembly for the purpose of conducting a referendum of the teacher members of the Retirement System. I am, therefore, requesting an official opinion in answer to the following:

Can the Board of Trustees of the Public School Retirement System of Missouri legally authorize the expenditure of funds of the Retirement System for the purpose of conducting a referendum of the members of the system to determine whether the service in positions covered by the Retirement System shall be excluded from or included under Federal Social Security coverage?

"We will appreciate receiving this requested opinion at the earliest possible date since no action can be taken with regard to the referendum until the opinion has been received."

At the time of enactment of Missouri statutes extending federal social security coverage to state and local government employees, the federal law provided that coverage should not extend to employees who were at that time under a retirement system. A subsequent amendment to the federal act provided for the extension of coverage to such employees when authorized by a vote of the employees involved. Senate Committee Substitute for Senate Bill No. 186 of the 68th General Assembly, to which you refer, is designed to permit Missouri employees under retirement systems to take advantage of such coverage if they so elect.

The operation of the Public School Retirement System is financed wholly from contributions from teachers and employing school districts. By Section 169.110, RSMo 1949, no state funds are to be made available to finance the plan or to pay retirement allowances.

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The retirement system act contains very few provisions relating to the use of funds for the payment of ordinary operating expenses of the system. Section 169.040, RSMo, 1955 Supp., provides, in part:

"1. All funds arising from the operation of sections 169.010 to 169.130 shall belong to the retirement system herein created and shall be controlled by the boards of trustees of that system, which board shall provide for the collection of said funds, shall see that they are safely preserved, and shall permit their disbursement only for the purposes herein authorized. \* \* \*"

Section 169.020(2), RSMo, 1955 Supp., provides as follows:

"The general administration and the responsibility for the proper operation of the retirement system and for making effective the provisions of sections 169.010 to 169.130 are hereby vested in a board of trustees of five persons, as follows: Two persons to be appointed as trustees by the state board of education; two persons to be elected as trustees by the members of the retirement system; the state commissioner of education who shall serve as trustee by virtue of his office."

We find no further provisions relating to the expenditure of funds of the system for the usual and ordinary expenses of its operation. In the absence of any further provision, it must be presumed that the Legislature intended that the trustees control expenditures from the fund and that they should have the authority to pay therefrom the reasonably necessary expenses of the operation of the system.

The cost of an election to determine whether or not members of the system should receive benefit of coverage under the Federal Social Security Act appears to us to be such an expenditure. The election is to be held by reason of the fact that the employees are now members of the system. The election is for the benefit of such employees. The Legislature, having made no other provision for payment of cost of the election, must have intended that the funds of the system should bear such cost.

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CONCLUSION

Therefore, it is the opinion of this office that the Board of Trustees of the Public School Retirement System of Missouri may legally authorize the expenditure of funds of the retirement system for the purpose of conducting a referendum of the members of the system to determine whether service in positions covered by the retirement system shall be excluded from or included under federal social security coverage.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Robert R. Welborn.

Yours very truly,

JOHN M. DALTON  
Attorney General

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