

FILED

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OFFICERS: STATE OFFICERS: EMPLOYEES:  
STATE EMPLOYEES: RETIREMENT: STATE  
RETIREMENT SYSTEM: CIVIL DEFENSE:  
STATE SURVIVAL PLANS PROJECT:  
SURVIVAL PLANS PROJECT:

Personnel of the Missouri State Survival Plans Project qualify under the law to become members of the Missouri State Employees' Retirement System.

October 7, 1957

Honorable Newton Atterbury, Secretary  
Missouri State Employees' Retirement System  
State Capitol  
Jefferson City, Missouri

Dear Sir:

You have recently requested an opinion from this office on the following question:

"Can employees of the Missouri State Survival Plans Project qualify under the law and become members of the Missouri State Employees' Retirement System?"

The law creating the Missouri State Employees' Retirement System was passed by the 69th General Assembly as House Bill No. 188, and after having been duly approved by the Governor became effective August 29, 1957. This law is found in No. 4 of the 1957 Pamphlets to Vernon's Annotated Missouri Statutes as Sections 104.310 to 104.550, inclusive.

The qualification of employees under this plan is governed by the definition of "department" and "employee" found in Paragraphs 11 and 15, respectively, of Section 104.310. These definitions read as follows:

"(11) 'Department', any department, institution, board, commission, officer, court or any agency of the state government receiving state appropriations including allocated funds from the federal government and having power to certify payrolls authorizing payments

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of salary or wages against appropriations made by the federal government or the state legislature from any state fund, or against trusts or allocated funds held by the state treasurer;

"(15) 'Employee', any elective or appointive officer or employee of the state who is employed by a department and earns a salary or wage in a position normally requiring the actual performance by him of duties during not less than one thousand five hundred hours per year, including each member of the General Assembly, but not including any employee who is covered under some other retirement or benefit fund to which the state is a contributor, except this definition shall not exclude any employee as defined herein who is covered only under the Federal Old Age and Survivors' Insurance Act, as amended. As used in sections 104.310 to 104.550, the term 'employee' shall include civilian employees of the Army National Guard or Air National Guard of this State who are employed pursuant to section 709 of title 32 of the United States Code and paid from Federal appropriated funds;"

This question concerns employees who are working under the provisions of the Missouri State-wide Operational Survival Plan Project Agreement, Contract No. CD-SP 57-55, between the United States of America and the State of Missouri, effective June 17, 1957. The work under this contract is required to be completed not later than June 17, 1958. The contract provides in Article II thereof, that the United States will reimburse the State of Missouri (and make certain advance payments) in an amount not to exceed \$158,157.50 for allowable costs as specified in the contract. These federal funds are by the contract to be advanced to and paid to the treasurer of the State of Missouri to be disbursed upon the direction of the State Director of Civil Defense. Allowable costs under this contract include, and primarily consists of, payments for personal services by persons performing the work required by the contract.

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Article IV of the contract provides that the State of Missouri shall engage a planning staff to perform the functions required by the contract, which staff shall be acceptable to the Federal Civil Defense Administration. Thus, it appears that the persons performing services under this contract are hired by the State of Missouri, and their compensation is paid by disbursement from the treasury of the State of Missouri of funds advanced to the State of Missouri for that purpose, or for which the State of Missouri will be reimbursed by the federal government under the contract.

It thus appears that the people working on the State Survival Plans Project are hired, fired and paid by the State of Missouri and therefore, constitute employees within the definition of that term quoted supra.

Payments of compensation are made by the treasury of the State of Missouri on the direction and certification of the Missouri State Director of Civil Defense from funds advanced or reimbursed by the federal government; and thus it appears that the State Survival Plans Project is an agency of the state government receiving state appropriations including allocated funds from the federal government; and that it has power to certify payrolls authorizing payments of salary or wages against appropriations made by the federal government or the state legislature. It would, therefore, appear that all of the requirements of the definitions quoted supra are met and that these employees qualify under the law.

#### CONCLUSION

It is, therefore, the conclusion of this office that personnel of the State Survival Plans Project qualify under the law and become members of the Missouri State Employees' Retirement System.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Fred L. Howard.

Yours very truly,

John M. Dalton  
Attorney General