

OFFICERS: STATE OFFICERS: EMPLOYEES:
STATE EMPLOYEES: STATE RETIREMENT
SYSTEM: STATE EMPLOYEES' RETIREMENT
SYSTEM: PUBLIC SCHOOL RETIREMENT
SYSTEM: TEACHERS' RETIREMENT SYSTEM:

The director and employees of the Public School Retirement System do not qualify under the law, and do not 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 matter:

"Can the director and employees of the Public School Retirement System qualify under the law and become members of the 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



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having power to certify payrolls authorizing payments 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;"

Your question concerns the director and those employed under him in the office of the teacher and school employees' retirement system created by Chapter 169, RSMo 1949, as amended. It will be noted that Section 169.030, RSMo 1957 Supplement, provides that: "The funds required for the operation of the retirement system" shall come from contributions made by the employees and the employer. These funds belong to the retirement system. They do not become funds of the state of Missouri, and may not be commingled with state funds under the provisions of Section 169.040, RSMo 1957 Supplement. When the public school retirement system was first set up, it was provided in Section 169.110 RSMo 1949 that the legislature might appropriate funds for the operation of this system until sufficient contributions were received to take care of the operation, but that such appropriations would be repaid by the system to the state.

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Under this set up the system now receives no appropriations from the state but is an entirely self-sufficient unit operating on its own funds, which are by statute declared not to be state funds. Payment of administrative expenses and the compensation of the director and his employees are made from the fund, not from appropriations. Thus, the teachers and school employee retirement system cannot qualify under the definition of "department" as contained in Paragraph 11, of Section 104.310, quoted supra, since it does not receive state appropriations and does not have power to certify payrolls authorizing the payment of salary or wages against appropriations. Consequently, the director and his employees, or rather the employees of the system, cannot qualify under the law.

CONCLUSION

It is, therefore, on the basis of the foregoing the conclusion of this office that the director and employees of the Teacher and School Employee Retirement System cannot qualify under the law, and do not 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

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