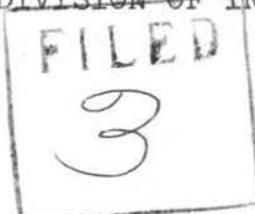


OFFICERS: STATE OFFICERS: EMPLOYEES:
STATE EMPLOYEES: STATE EMPLOYEES"
RETIREMENT SYSTEM: STATE RETIREMENT
SYSTEM: INSURANCE: DIVISION: DIVISION
OF INSURANCE: EXAMINERS: INSURANCE
EXAMINERS: EXAMINERS OF THE DIVISION
OF INSURANCE: EXAMINERS IN THE
DIVISION OF INSURANCE:

Examiners in the Division
of Insurance qualify under the
law and become members of the
Missouri State Employees' Retirement
System.



October 14, 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:

"The question has been raised as to whether
or not the examiners employed by the Division
of Insurance to make examination of insurance
companies licensed in this State, are covered
under the Missouri State Employees' Retirement
System, as the statute is presently worded.

"The Superintendent of Insurance is required
to examine the financial condition, affairs
and management of any insurance company in-
corporated by or doing business in this State,
and since it is a physical impossibility for
him to do so in person, he is authorized under
Section 374.110 and Section 374.190 R. S. Mo.
1949, to employ examiners and actuaries necessary
to do the actual work. * * *

"The per diem and expenses paid examiners are paid
direct to the examiners upon accounts approved
by the Superintendent. Section 148.400 R.S. Mo.
1949, provides that these examination fees paid
by the company may be deducted from the two
per cent premium taxes payable to the State
of Missouri. This is admittedly a unique
way of paying employees of the Division of
Insurance, but it is a system that has been
followed ever since the Insurance Department
was established and is common practice in most

Honorable Newton Atterbury, Secretary

of the other states in the United States."

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 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;"

These examiners are employed by the Division of Insurance pursuant to statutory authority as indicated in your request. They are selected by the Division, they hold their position at the pleasure of, and they may be discharged by, that Division. Under the statutory set up the money for their compensation and

Honorable Newton Atterbury, Secretary

expenses is initially paid by the company which is being examined, and such company is then allowed this amount as a deduction from the premium taxes paid by the company to the state of Missouri.

Thus, it is apparent that these examiners are employees as defined by Paragraph 15 of Section 104.310, supra. The Division of Insurance is a division within the Department of Business and Administration and as such is supported by appropriations made by the legislature for that purpose. Such appropriations cover compensation for personal services as well as the operating expenses of the Division, and the Division is authorized to certify payrolls authorizing the payment of salary or wages against appropriations. Thus, the Division of Insurance qualifies under the definition of "department" as contained in Paragraph 11 of Section 104.310, supra.

There is no requirement in the Retirement System Law that the individual employee under consideration be paid all or any part of his compensation directly from appropriations made by the legislature, or that his individual compensation be certified on payrolls authorizing payments against appropriations. The law is satisfied if the department has these powers generally. Here the examiner is an employee of the Division of Insurance which is a "department" as defined by the law. Therefore all requirements of the law are met.

CONCLUSION

It is, therefore, on the basis of the foregoing, the conclusion of this office that examiners in the Division of Insurance 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.

Very truly yours,

John M. Dalton
Attorney General

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