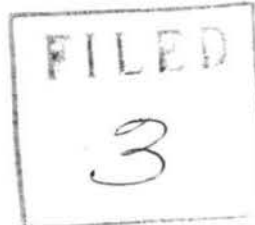


OFFICERS: STATE OFFICERS:  
EMPLOYEES: STATE EMPLOYEES:  
RETIREMENT: STATE RETIREMENT  
SYSTEM: MAGISTRATES: CLERKS  
OF MAGISTRATE COURTS:  
MAGISTRATE CLERKS: CIRCUIT  
COURT REPORTERS: REPORTERS  
OF CIRCUIT COURTS: STATE  
EMPLOYEES' RETIREMENT SYSTEM:

Court reporters, magistrate clerks and  
magistrates are not covered by the Missouri  
State Employees' Retirement System Law.



October 18, 1957

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

Dear Sir:

You have recently requested an official opinion from this office concerning the following:

"Can court reporters, magistrate clerks and  
magistrate judges, or any of them, qualify as  
members of the Missouri State Employees'  
Retirement System?"

House Bill No. 188 was enacted by the 69th General Assembly and became effective, after having been duly approved by the Governor, on August 29, 1957. This law now comprises Sections 104.310 to 104.350, RSMo Supp. 1957, as set out in the August, 1957, Pamphlet Supplementing Vernon's Annotated Missouri Statutes. Section 104.310 (Section 1 of House Bill No. 188) contains the definitions of terms used in this law. Paragraph 15 defines "employee," and Paragraph 11 defines "department." It is from the provisions of these two definitions that we must determine whether or not the people about whom you inquire can qualify under this law and become members of the Missouri State Employees' Retirement System.

The definition of "employee" is as follows:

"(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

Honorable Newton Atterbury, Secretary

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; \* \*"

The definition of "department" is 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; \* \*"

As to magistrates, the salaries of regular magistrates are paid by the state, whereas the salaries of "additional magistrates" are paid by the county as provided in Section 482.150 RSMo Supp. 1955. Likewise, the clerks of the magistrate courts are paid from the same sources as are the magistrates under whom they serve.

In order to qualify under this act a magistrate must be an "elective or appointive officer, or employee of the state who is employed by a department. . . ." There is grave question as to whether or not a magistrate is either an officer or employee of the state. Likewise, the definition of employee excludes "any employee who is covered under some other retirement or benefit fund to which the state is a contributor." Section 27 of Article V of the Constitution includes magistrates amongst those who may receive benefits when retired for disability during his term. This again creates a serious problem as to whether or not magistrates may qualify. However, in view of the conclusion reached hereinafter in this opinion we do not find it necessary to pass upon these questions.

Since an employee must be one who is "employed by a department" it becomes necessary to consider the statutory definition of department. This definition is set out above. After careful consideration it is concluded that neither a magistrate nor the magistrate court, of which the magistrate is the judge, comes within the definition of department. Such department must be one which receives state appropriations, and while some magistrates are paid by the state of Missouri out of funds appropriated by the Legislature, these appropriations are not made to the magistrate

Honorable Newton Atterbury, Secretary

or to the magistrate court but the appropriation is to a fund created in the treasury out of which payment is made to the various magistrates.

Thus it is concluded for the reasons indicated that neither the magistrate nor the magistrate court is a department within the above definition, and, consequently magistrates cannot qualify under the law and do not become members of the Missouri State Employees' Retirement System.

As to the clerks of magistrate courts, their situation is essentially the same as that of the magistrate. They are paid by the state out of appropriations, but such appropriations are not made to the magistrate or the magistrate court by whom they are employed, and since it has been held that the magistrate or magistrate court is not a department it is clear that the clerk is not an employee of a department, and, therefore, cannot become a member of the Missouri State Employees' Retirement System.

As to circuit court reporters, they are paid one-fourth out of the state treasury and three-fourths out of the treasuries of the county or counties comprising the circuit which they serve. See Section 485.065 RSMo Supp. 1955. Again, as is discussed above, the appropriation for the one-fourth of the court reporter's salary is not made to the circuit court but is made to a fund in the state treasury out of which these payments are made to the reporters. It is, therefore, concluded that the reporters of the various circuit courts cannot qualify under the law and do not become members of the Missouri State Employees' Retirement System.

#### CONCLUSION

On the basis of the foregoing, it is the conclusion of this office that neither magistrates, magistrate clerks, nor circuit court reporters can 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

FLH:vlw:ld