

NATIONAL GUARD:
MISSOURI STATE EMPLOYEES'
RETIREMENT SYSTEM:

A civilian employee of the Missouri State National Guard is entitled to the full benefits under the Missouri State Employees' Retirement System (Sections 104.310 to 104.660, RSMo 1959), notwithstanding the failure of the Federal Government to match said employees' four per cent contribution.

August 24, 1961



Mr. W. A. Hemphill
Secretary, State Employees' Retirement System
State Capitol Building
Jefferson City, Missouri

Dear Mr. Hemphill:

This is in reply to your opinion request of August 2, 1961, wherein you state:

"At a meeting of the Board of Trustees, on July 26, 1961, the Secretary was requested to ask for an informal opinion, as to whether or not the Board of Trustees could reduce the benefits of National Guard Employees to 50%, since they are only contributing 4%, which is the employees' share and the System is receiving no matching funds from the employer, which is the Federal Government."

Although civilian employees of the Missouri National Guard receive their compensation from the Federal Government and not from any department of the State of Missouri, they are specifically included under the Missouri State Employees' Retirement System, pursuant to Section 104.310(15) RSMo 1959, which states, in part, as follows:

". . .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;"

Thus, being an employee under the State Retirement Act, it is mandatory that said employees become and remain members of the

Mr. W. A. Hemphill

Retirement System during their tenure of employment pursuant to Section 104.330. As such, under Section 104.360, four per cent is deducted from their annual compensation up to \$7500.00. This being done, said employees have completely fulfilled their obligations under the contractual agreement. The fact that the Federal Government is unable or unwilling to match the employees' contribution of four per cent as required by Section 104.370(3) would not serve to either oust these employees from their membership under the Retirement System or prevent them from receiving the full benefits under said system. This is so because the language of the State Retirement Act is silent as to the effect upon the benefits of such employees in the event the Federal Government does not match the employees' contribution of the required four per cent.

CONCLUSION

It is, therefore, the conclusion of this office that a civilian employee of the Missouri State National Guard is entitled to the full benefits under the Missouri State Employees' Retirement System (Sections 104.310 to 104.600, RSMo 1959), notwithstanding the failure of the Federal Government to match said employees' four per cent contribution.

The foregoing opinion, which I hereby approve, was prepared by my assistant, George W. Draper, II.

Very truly yours,

THOMAS F. EAGLETON
Attorney General

GWD:lc:ms