

STATE EMPLOYEES:
RETIREMENT:
STATE RETIREMENT SYSTEM:

Those members retired prior to the effective date of the amendment to Section 104.390, V.A.M.S. 1961, increasing the normal annuity of a member from 5/6ths of one per cent to one per cent are not entitled to said increase in benefits.

October 19, 1961



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

Dear Mr. Hemphill:

This is in answer to your request for an opinion dated August 2, 1961, and which reads as follows:

"On July 26, 1961, the Board of Trustees of the Missouri State Employees' Retirement System met in the Senate Lounge for their quarterly meeting and during the meeting an increase for previously retired members was brought before the Board of Trustees.

"During the discussion, it was pointed out that since there was no increase in contributions by members of the System, could there be a possibility, on these merits, that an increase in benefits could be granted, since the 71st General Assembly amended Section 104.390, granting an increase in benefits from 5/6 of 1% to 1%.

"We would like for you to give us a formal opinion as to whether or not the Board of Trustees could authorize an increase to retired members."

As amended by the 71st General Assembly, the pertinent part of Section 104.390, V.A.M.S. 1961, now states:

"The normal annuity of a member shall equal one percent of the average compensation of the member multiplied by

Mr. W. A. Hemphill

the number of years of creditable service of such member, - - - -." (House Bills Nos. 131 & 410.)

Thus the only change by the legislature, in this respect, was to increase the normal annuity of a member from 5/6ths of one per cent to one per cent.

On May 12, 1961, this office rendered an official opinion to Mr. Robert R. Welborn, Chairman of the Missouri State Employees' Retirement System, which held:

"1. An amendment to the 'Missouri State Employees' Retirement System' (Sections 104.310 to 104.600, RSMo 1959) granting an increase in benefits to retired employees at the time of the amendment without said employees voluntarily contributing a reasonable sum to the fund therefor, would be in violation of Article III, Section 39(3) of the Missouri Constitution.

"2. An amendment to the 'Missouri State Employees' Retirement System' (Sections 104.310 to 104.600, RSMo 1959) granting an increase in benefits to retired employees at the time of the amendment on the condition that said retired employees voluntarily pay a reasonable sum certain into said retirement system as a condition precedent to receiving said increased benefits would be valid."

We continue to adhere to that view.

As a result of said opinion, the issue now presented is whether or not there exists a present consideration on the part of those retired employees on the effective date of the amendment (October 15, 1961) so as to entitle them to the increase from 5/6ths of one per cent to one per cent. For, in the absence of a consideration passing from the retired employees to the system, said retired employees are not entitled to the increase.

Mr. W. A. Hemphill

A review of Section 104.390, V.A.M.S. 1961, as amended by the 71st Legislature, discloses no language contained therein which requires any consideration from the retired employees in order for them to receive the increase from 5/6ths of one per cent to one per cent. In fact, the language used discloses no specific legislative intent to provide for an increase in the benefits payable to retired employees. If the language authorizing an increase in benefits could be construed to apply to retired members as well as to those presently employed, it would be invalid under the ruling in our former opinion for the reason it fails to require any consideration passing from said retired members.

CONCLUSION

Those members of the Missouri State Employees' Retirement System retired prior to the effective date of Section 104.390, House Bills 131 and 410, of the 71st General Assembly, increasing the normal annuity of a member from 5/6ths of one per cent to one per cent are not entitled to said increase in benefits.

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