

PUBLIC SCHOOL RETIREMENT
SYSTEM:
MISSOURI STATE EMPLOYEES'
RETIREMENT SYSTEM:
MEMBERS OF THE GENERAL
ASSEMBLY:
LEGISLATORS:

A member of the General Assembly who is covered by the retirement or benefit fund of the Public School Retirement Fund cannot also become a member of the Missouri State Employees' Retirement System.

May 15, 1961



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Mr. Ealum Bruffett
Representative Ozark County
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Mr. F. L. Brenton
Representative Crawford County
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Gentlemen:

This is in reply to your opinion request of March 22, 1961, wherein you ask:

"Can a public school teacher who is a member of the Public School Retirement System of Missouri and who is likewise a member of the State Assembly participate in both the Public School Retirement System and in the retirement system, which has been established for State Legislators."

The only prohibition we can find against a person belonging to both the Public School Retirement System of Missouri created by Sections 169.010 to 169.130 RSMo 1959 and the Missouri State Employees' Retirement System as created by Sections 104.310 to 104.550 is contained in the definition of employee under the Missouri State Employees' Retirement System in subsection 15 of Section 104.310 RSMo 1959 and the applicable portion of said statute reads as follows:

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"'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
* * *" (Emphasis supplied)

The answer to your question then lies in the question of whether or not the state is a contributor to the Public School Retirement System of Missouri, created by Section 169.010 to 169.130.

Section 169.110 RSMo 1959 reads in part as follows:

" * * * and provided further, that the state of Missouri shall contribute no funds directly or indirectly to finance the plan to pay retirement allowances by appropriation bills or otherwise, except for payments or contributions of persons employed by the state board of education as provided in subsection 6 of section 169.010, and except those funds which the district may receive from time to time under a law or laws providing for a general apportionment of school moneys throughout all the state." (Emphasis supplied)

The Legislature has made two exceptions to the rule that the state of Missouri shall contribute no funds to the Public School Retirement System of Missouri, one being in the case of persons employed by the State Board of Education and the other being those funds which a district may receive under a general apportionment of school moneys. Since these two exceptions are made, it is clear that the state does contribute money to the Public School Retirement System of Missouri in the case of persons employed by the State Board of Education and by means of funds which the district may receive under a general apportionment of school moneys.

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A person who is covered by the "retirement or benefit fund" of the Public School Retirement System of Missouri created under Sections 169.010 to 169.130, RSMo 1959, either as a contributing member of the system or as a retired beneficiary of the fund, is excluded from the definition of "employee" contained in Subsection 15 of Section 104.310, RSMo 1959 of the Missouri State Employees' Retirement System, because the State is a contributor to the retirement or benefit fund of the Public School Retirement System of Missouri.

CONCLUSION

It is the opinion of this office that a member of the General Assembly who is covered by the retirement or benefit fund of the Public School Retirement System of Missouri created under Sections 169.010 to 169.130, RSMo 1959, either as a contributing member of the system or as a retired beneficiary of the fund, is excluded from the definition of employee in Subsection 15 of Section 104.310, RSMo 1959 under the Missouri State Employees' Retirement System and therefore cannot become a member of the Missouri State Employees' Retirement System.

This opinion, which I hereby approve, was prepared by my assistant, Wayne W. Waldo.

Yours very truly,

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Attorney General

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