

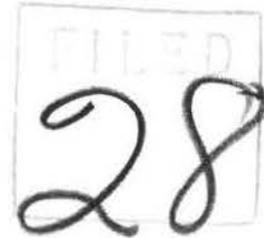
PUBLIC SCHOOL RETIREMENT SYSTEM:
TEACHERS' RETIREMENT SYSTEM:
CONTRIBUTIONS:
BENEFITS:

Refund or withdrawal of accumulated contributions in teachers' Retirement System are not included in the term "monetary benefits" as used in paragraph 9 of Section 169.070, RSMo, Cum. Supp. 1961.

(Opin. No. 389 ('61)
" 28 ('62)

March 30, 1962

Mr. G. L. Donahoe
Executive Secretary
Public School Retirement System of Missouri
Room 801, Jefferson Building
Jefferson City, Missouri



Dear Mr. Donahoe:

This is in reply to your letter of October 23, 1961, in which you requested an opinion of this office. The questions you propound are stated in the last paragraph of your letter, as follows:

"We need to know whether the payments provided for in subsections 3, 4, and 5 of Section 169.070 are to be considered as 'monetary benefits'. If the payments are to be considered as 'monetary benefits', are we to pay only two-thirds of the amount provided for in subsection 3, 4 or 5 if a member has elected to pay a retroactive contribution? If a member has not elected to pay a retroactive contribution, will we make two calculations; i.e., one because of the contributions and interest resulting from services prior to July 1, 1961, for which we make payment in full, and another because of the contributions and interest resulting from services after July 1, 1961, and for which we pay two-thirds of the amount provided for in subsection 3, 4 or 5?"

The essence of your question is the meaning of the word "benefits" and the phrase "monetary benefits" contained in

paragraph 9 of Section 169.070, RSMo, Cum. Supp. 1961, and whether the word or phrase includes the refunding of accumulated contributions in accordance with paragraphs 3, 4 and 5 of that section.

Paragraphs 3, 4 and 5 of Section 169.070, RSMo 1959, read as follows:

"3. If the total of the retirement allowances paid to an individual before his death is less than his accumulated contributions at the time of his retirement, the difference shall be paid to his beneficiary, or to his estate, if there be no beneficiary, provided however, that no such payment shall be made if one of the options in subsection 1 of this section has been elected.

"4. If a member dies before receiving a retirement allowance, his accumulated contributions at the time of his death shall be paid to his beneficiary or to his estate, if there be no beneficiary, provided however that no such payment shall be made if the beneficiary elects option 1 in subsection 1 of this section.

"5. If a member ceases to be a public school employee as herein defined and certifies to the board of trustees that such cessation is permanent, or if his membership is otherwise terminated, he shall be paid his accumulated contributions with interest if he has contributed for more than five years, or if he has contributed for less than five years and such termination occurs after he has attained age sixty-five with less than five years of creditable service. If he has contributed for not more than five years and his termination occurs before he has attained age sixty-five,

he shall be paid the amount he has contributed without interest."

The question presented then is whether the payments provided for in these three paragraphs are included in the term "monetary benefits" as that term is used in paragraph 9 of Section 169.070, RSMo, Cum. Supp. 1961. In order to determine that question, we direct our attention to that paragraph, and in order to fully understand that particular paragraph we should first trace its history. Paragraph 9 of Section 169.070, RSMo 1959, was amended by the 71st General Assembly, and the present law became effective on October 13, 1961. The present law with which we are concerned now reads as follows:

"9. Notwithstanding anything in this law to the contrary, from the effective date of this law, the contribution rate under this law shall be multiplied by the factor of two-thirds for any member of the system for whom Federal Old Age and Survivors Insurance tax is paid from state or local tax funds on account of his employment entitling him to membership in the system. The monetary benefits under this law for such a member shall be multiplied by the factor of two-thirds if the member elects within one year after this law becomes effective to pay into the system a retroactive contribution of four per cent on that part of his annual salary rate which was in excess of four thousand eight hundred dollars but not in excess of eight thousand four hundred dollars for each year of employment in a position covered by the system between July 1, 1957 and July 1, 1961. The retroactive payment shall be made by the member paying to the system over a period of not longer than four years from the date of election provided however, that if a member is retired prior to completing such payments the balance due shall be deducted from his retirement allowance. The monetary benefits under

this law for a member not electing to make retroactive payments shall be the sum of

"(1) The benefits provided in this section, as it appears in RSMo 1959, for years of creditable service prior to July 1, 1961; and

"(2) Two-thirds of the monetary benefits under this law for years of creditable service after July 1, 1961. If there is a discontinuance or termination of the payment of Federal Old Age and Survivors Insurance tax from state or local funds the provisions of sections 169.010 to 169.130, RSMo, shall be in full force and effect for such a member."

Prior to this new enactment, this particular paragraph of this section as it appeared in the 1959 Revised Statutes was as follows:

"9. Notwithstanding anything in this law to the contrary, the contribution rate fixed by the board of trustees prior to the effective date of this law and all other conditions with respect to contributions, salary upon which contributions are made, and benefits as provided by law prior to the effective date of this law shall be in force for any member of the system for whom federal old age and survivors' insurance tax is paid from state or local tax funds on account of his employment entitling him to membership in the system, provided that if there is a discontinuance or termination of the payment of federal old age and survivors' insurance tax from state or local tax funds for such member, the provisions of this law relative to contribution rate, salary upon which

contributions are made and benefits for services thereafter shall be in full force and effect as of the date of discontinuance of such payment."

This paragraph 9 of Section 169.070, RSMo 1959, was a new paragraph which was added by amendment in 1957 (Laws of 1957, page 432).

The primary rule in the construction of statutes is set out in *A. P. Green Fire Brick Company v. Missouri State Tax Commission*, Mo. Sup., 277 SW2d 544, 1.c. 545, as follows:

"The primary rule of construction of statutes is to ascertain the lawmakers' intent, from the words used if possible; and to put upon the language of the Legislature, honestly and faithfully, its plain and rational meaning and to promote its object, and "the manifest purpose of the statute, considered historically," is properly given consideration." *Cummins v. Kansas City Public Service Co.*, 334 Mo. 672, 66 S.W.2d 920, 925."

In determining the meaning of the word "benefits" and the phrase "monetary benefits" as used in paragraph 9 of Section 169.070, we first refer to the definitions contained in Section 169.010 and see that neither the word nor the phrase are defined in that section. In fact, the phrase "monetary benefits" can be found in no other section of the law governing the Public School Retirement System of Missouri. We are unable to see any distinction between the word "benefits" and the phrase "monetary benefits", and for the purposes of this opinion we will treat them as synonymous. In other words, we will consider "monetary benefits" to be the same as "benefits".

Although the word "benefits" is not defined in Section 169.010, the word appears in many other sections of the law governing the Public School Retirement System of Missouri. As used, the word appears to be a generic term applying variously to retirement allowances, disability allowances, survivors' death benefits, or other special benefits. Nowhere in this law is the word "benefits" given any technical meaning. In paragraph 9 of Section 169.070, RSMo, Cum. Supp. 1961, the term "monetary benefits" is used in reference to

two separate categories. The first category applies to the members specified in that subsection who elect to make a retroactive contribution, and for such members the monetary benefits under the System shall be multiplied by the factor of two-thirds. The second category applies to members who do not elect to make the retroactive contributions to the System, and for such members the monetary benefits under the System are declared to be the sum of (1) "The benefits *** for years of creditable service prior to July 1, 1961", and (2) "Two-thirds of the monetary benefits *** for years of creditable service after July 1, 1961. ***". In this second category, the benefits or monetary benefits referred to are only those benefits "for years of creditable service". A refund, return or withdrawal of accumulated contributions under paragraphs 3, 4 or 5 of Section 169.070 is not in any way connected to "years of creditable service". Therefore, a refund, return or withdrawal of contributions is not included in the term "benefits or monetary benefits" as it applies to the second category. We are of the opinion that the monetary benefits referred to under the first category are the same as those referred to in the second category, and therefore, under this interpretation, the benefits or monetary benefits referred to in paragraph 9 of Section 169.070 do not include a refund, return or withdrawal of accumulated contributions under paragraphs 3, 4 or 5 of that section.

This interpretation is logical and gives a plain and rational meaning to the law in question. A contrary interpretation would not be in conformity with the manifest purpose of the law and would produce the incongruous result of permitting those members within the purview of paragraph 9 to withdraw only two-thirds of their accumulated contributions while all other members of the system could withdraw all of their accumulated contributions.

This interpretation and conclusion are supported by the decision regarding benefits and withdrawal of contributions in the case of State ex rel. State Employees' Retirement Board v. Yelle, 195 P. 2d 646, 648, 31 Wash. 2d 87. In that case it was held that the refunding of contributions of a member of the state retirement system who had ceased to be an employee before his retirement was not a "retirement allowance" nor one of the "benefits" to which a retiring

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member was entitled under the act setting up the state employees' retirement system.

We therefore conclude that the payments provided for in paragraphs 3, 4, and 5 of Section 169.070 are not considered as "benefits" or "monetary benefits" referred to in paragraph 9 of Section 169.070, RSMo, Cum. Supp. 1961. Since we have concluded that such payments are not benefits, it will be unnecessary to answer the other questions which you have propounded.

CONCLUSION

It is the opinion of this office that the payment of a refund, return or withdrawal of accumulated contributions under paragraphs 3, 4 or 5 of Section 169.070, RSMo, is not included in the word "benefits" or the phrase "monetary benefits" as used in paragraph 9 of Section 169.070, RSMo, Cum. Supp. 1961.

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

Very truly yours,

THOMAS F. EAGLETON
Attorney General

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