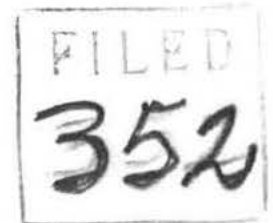


OFFICERS: Retirement is compulsory for all employees  
PUBLIC OFFICERS: of the State Board of Barber Examiners at  
RETIREMENT: the age of 65 years, except that (1) any  
STATE EMPLOYEES: employee, upon written request, with the  
written approval of the President of said  
barber board filed with the Retirement  
Board in advance of the retirement date,  
may be retained for successive periods of  
one year until age 70; and except that (2)  
any person with professional, scientific  
or technical skills who is so certified to  
the trustees of the retirement system by  
his department head and such certification  
approved by the Retirement Board, shall  
not be precluded employment or continued  
employment at any age. The Governor may  
appoint any person to the State Board of  
Barber Examiners who meets the requirements  
of Section 328.030, RSMo, regardless of age.

Opinion No. 352

October 23, 1964

Mr. Leon F. Burton  
Secretary-Treasurer  
State Board of Barber Examiners  
131 Capitol Building  
Jefferson City, Missouri



Dear Mr. Burton:

You have requested an official opinion of this office  
construing the Missouri State Employees' Retirement System Law,  
Chapter 104, RSMo, as it bears upon the following questions:

- (1) May the State Board of Barber Examiners retain in  
its employment an inspector after he has reached the age of  
70 years;
- (2) May the Barber Board employ anyone over the age of  
65 years;
- (3) May the Barber Board employ anyone over the age of  
70 years;
- (4) May the Governor appoint a member of the State Board  
of Barber Examiners who has reached the age of 70 years.

Section 104.330, RSMo, makes all employees of the State  
of Missouri members of the State Employees' Retirement System.  
Section 104.310 provides that the normal retirement age is 65  
years for all members.

Your questions are governed by Section 104.380, RSMo, which reads as follows:

"1. Each member shall retire at the end of the month during which such member shall reach normal retirement age with a normal annuity, except that

"(1) Any employee, upon written request, with the written approval of his department head filed with the board in advance of the retirement date, may be retained for successive periods of one year until age seventy, when retirement shall be compulsory;

"(2) Any person in any age category with professional, scientific or technical skills, who is so certified to the board of trustees by his department head, and such certification is approved by the board, shall not be precluded employment or continued employment; and

"(3) No member of the general assembly, and no elected official or other official appointed by the governor, or appointed for a fixed term, shall retire; regardless of his age, unless such retirement is otherwise provided for by law, until his term of office has been completed. Any member of the general assembly and any elected official or other official appointed by the governor or appointed for a fixed term who reaches normal retirement age during his term of office shall receive his annuity commencing with the end of the first month after the month during which he has completed his term of office.

"2. If a retired member is elected to any state office or is appointed to any state office he shall not receive an annuity for any month or part of a month for which he serves as an officer, but he shall receive an annuity calculated to include his additional creditable service commencing with the end of the first month after the month during which his term of office has been completed.

"3. Any member who has reached normal retirement age and has retired may elect, in writing, to have his accumulated contributions paid to him in one lump sum in lieu of the payment of his normal annuity.

"4. Except as otherwise provided in this section, a retired member shall not continue in, be reemployed by, or perform any service for a department, for which employment or service a compensation or remuneration is paid to the retired member."

Under subsection one, retirement is compulsory at age 65, with three exceptions. The first exception comprises employees who upon written request, with the written approval of his department head filed with the Retirement Board in advance of the retirement date, may be retained for successive periods of one year until age of 70, when retirement will be compulsory.

The second exception exempts from retirement by reason of age persons with professional, scientific or technical skills, so certified to the board of trustees of the retirement system by the department heads involved where such certification is approved by the Retirement Board.

The third exception applies to members of the general assembly, elected officials, and officials appointed by the Governor or appointed for a fixed term. No such person shall be retired by reason of age until his term of office has been completed.

Subsection two makes it clear that one who has reached the retirement age may be elected to state office or may be appointed to a state office.

As applied to your inquiries, the above provisions mean that the State Board of Barber Examiners are allowed to retain in its employment one who has reached the age of 65 years by complying with subparagraph (1) of subsection one, Section 104.380; that is, if the employee requests it in writing and if the President of the Barber Board approves the request in writing and files such approval with the Retirement Board prior to the end of the month during which the employee reaches the age of 65 years, he may be retained for successive periods of one year until the age of 70 when the retirement shall be compulsory. Also, an employee may be retained beyond age 70 if he is a person with professional, scientific, or technical skills and is so certified by his department head and such certification approved by the Board of Trustees of the Missouri State Employees' Retirement System.

The Barber Board may not newly employ anyone who is over 65 years of age, unless he falls into the category of persons with professional, scientific or technical skills so certified to the Board of Trustees of the retirement system by the President of the Barber Board, with the approval of the Retirement Board.

Mr. Leon F. Burton

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The Governor may appoint anyone to the State Board of Barber Examiners who meets the requirements of Section 328.030, RSMo, regardless of the age of the appointee.

CONCLUSION

It is the opinion of this office that retirement is compulsory for all employees of the State Board of Barber Examiners at the age of 65 years, except that (1) any employee, upon written request, with the written approval of the President of said Barber Board filed with the Retirement Board in advance of the retirement date, may be retained for successive periods of one year until age 70; and except that (2) any person with professional, scientific or technical skills who is so certified to the trustees of the retirement system by his department head and such certification approved by the Retirement Board, shall not be precluded employment or continued employment at any age. The Governor may appoint any person to the State Board of Barber Examiners who meets the requirements of Section 328.030, RSMo, regardless of age.

The foregoing opinion, which I approve, was prepared by my Assistant, Donald L. Randolph.

Yours very truly,

  
THOMAS F. EAGLETON  
Attorney General