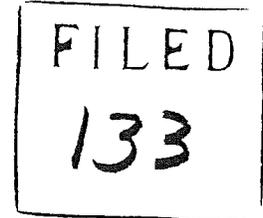


SCHOOL DISTRICTS: A teacher in the public school system
SCHOOL TEACHERS: of Missouri, who was eligible for state
RETIREMENT AGE: teacher retirement benefits under the
SOCIAL SECURITY: Public School Retirement system of Missouri,
upon reaching age 70, is also covered by
Federal Social Security after reaching age
70 when and if he occupies a position dif-
ferent from any position he occupied prior
to age 70 which was covered by such state
teacher-retirement system.

OPINION NO. 133

August 4, 1965



Honorable John C. Vaughn
Comptroller and Budget Director
Capitol Building
Jefferson City, Missouri

Dear Mr. Vaughn:

You have requested an official opinion of this office.
Your inquiry states:

"Are the positions of school teachers
over age 70 covered under the Social
Security Agreement as ineligibles?
If so, is there any distinction be-
tween those who continue to occupy
the position beyond age 70, and those
who are over age 70 when they first
occupy the position?"

This opinion involves those teachers, who, prior to
age 70 were members of the State Retirement System under
Sections 169.010 to 169.130 RSMo, as amended, and does not
include those groups of teachers in the public schools that
have elected coverage under Federal Social Security.

Section 169.060 RSMo 1963 Supp., provides that any
member in service shall be retired automatically on the
first day of July next following the school year in which
he reaches the age of 70 years.

The "Social Security Agreement" referred to in your inquiry was executed July 13, 1951, by the regional director of the Federal Security Administration on behalf of the United States and by the Governor and Comptroller on behalf of the State of Missouri. This agreement, taken in connection with subsequent modifications, extends the insurance system of the Federal Social Security Act to certain employees of the state, its sub-divisions, and instrumentalities. Modification No. 64, executed January 30, 1956, I (C) (1) (b) (iii), extends Social Security coverage to "Service performed by an individual . . . in a position covered by a [state] retirement system, if the individual performing such service was ineligible to become a member of such [state] retirement system on the date the agreement was made applicable to such coverage group (or, if later, the date on which such individual first occupied such position)." Individuals are not covered by Federal Social Security as long as they are eligible under the Public School Retirement System of Missouri.

A teacher (as defined in Section 169.010 RSMo; this includes employees who are not instructors) becomes ineligible under a state retirement system upon retirement at age 70 pursuant to Section 169.060, supra. He would thus be covered pursuant to I (C) (1) (b) (iii) of the Agreement which provides, "if the individual . . . was ineligible to become a member of such retirement system on the date the agreement was made applicable . . . or, if later, the date on which such individual first occupied such position." (Emphasis ours).

Thus, a teacher, formerly under the Public School Retirement System of Missouri, would be covered by Federal Social Security if he was ineligible to become a member of the Public School Retirement System of Missouri, on the date on which he first occupied his present position, otherwise he would not be covered by Social Security. Therefore, if he has the same position which he held before retirement age, he would not be covered by Social Security if, while in that position he had been covered by the Public School Retirement System of Missouri.

Teachers eligible for state retirement benefits upon reaching age 70, under the Public School Retirement System

of Missouri, may become eligible for Federal Social Security coverage by assuming, after reaching age 70, a position in the public schools different from any position previously held that was covered by such state retirement. Unless such change in employment occurs, a teacher past 70 cannot acquire coverage under Social Security.

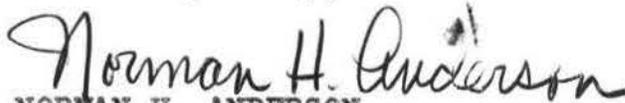
This opinion is not intended to approve the illegal employment of teachers beyond retirement age. This office has previously ruled that a school board cannot legally employ a teacher who is retired by the provisions of Section 169.060 RSMo 1959, except as a temporary substitute under Section 169.560, (Opinion 217, Cohn, July 25, 1962). The present opinion in no way changes our ruling in such Opinion No. 217. However, the United States Department of HEW by its Assistant General Counsel has ruled that if a person is an employee in fact, although his employment is illegal under state laws, such person is considered an employee for social security purposes. Therefore, this opinion is limited to employment for social security purposes.

CONCLUSION

It is the opinion of this department that a teacher in the public school system of Missouri, who was eligible for state retirement benefits under the Public School Retirement System of Missouri, upon reaching age 70, is also covered by Federal Social Security after reaching age 70, when and only when he occupies a position different from any position he occupied prior to age 70 which was covered by such state teacher-retirement system.

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

Yours very truly,



NORMAN H. ANDERSON
Attorney General