

SCHOOLS:
PUBLIC SCHOOL RETIRE-
MENT SYSTEM:
RETIREMENT:
PENSIONS:

1.) A member of a teachers' retirement system of this State who meets the requirements for retirement contained in the statutes particularly applicable to that system, i.e., as though Section 169.570(1), RSMo 1959, had never been enacted, is eligible to receive a retirement allowance from that system although employed in a position covered by one of the other systems;

2.) Conversely, a member of a teachers' retirement system of this State who cannot qualify for retirement without reliance upon the additional rights granted by Section 169.570(1) is not eligible for a retirement allowance under the earlier system under which he was employed until, and only if, he becomes eligible for service retirement under the system in which he is last employed (except those having previously retired on disability become eligible upon reaching retirement age.)

October 21, 1965

OPINION NO. 292

Mr. G. L. Donahoe
Executive Secretary
Public School Retirement
System of Missouri
801 Jefferson Building
Jefferson City, Missouri 65102



Dear Mr. Donahoe:

This opinion is rendered in response to your request for an official ruling.

You inquire:

"Assume that a member of the Public School Retirement System of Missouri has creditable service necessary to receive a service retirement allowance; that thereafter the member ceases to be employed in a district in our system and accepts employment in either the Kansas City or St. Louis teachers retirement system; and that before or after leaving our system the person attains a retirement age as prescribed for our system. Is that person entitled to a retirement allowance from our system while continuing in employment under one of the other systems? Especially do we inquire as to the effect of the provisions of Section 169.570 RSMo."

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The legislature has established at different times, three retirement systems for teachers in this State. Each system is a separate body corporate. Sections 169.010 - 169.130 RSMo, apply to the State system. Sections 169.270 - 169.400 apply to the Kansas City retirement system. Sections 169.410 - 169.540 apply to the St. Louis retirement system. (Sections 169.140 - 169.260, RSMo 1959, provide for retirement systems in school districts having a population of 75,000-150,000. No such retirement systems exist in fact. This opinion does not consider or rule upon legal rights under such a system.)

We are not aware of any statute which expressly prohibits receiving a retirement allowance from one system while being employed in a position covered by another of the systems.

In a prior opinion (Opinion No. 24, Donahoe, 5-29-52) this office ruled that a retirement allowance is payable to a member of the State system only during actual retirement, i.e., actual separation from the teaching service. The circumstance considered in Opinion 24 was that of a member of the State system being eligible for retirement but continuing in an employment covered by the State system.

Since the State, Kansas City, and St. Louis systems are separate and independent, we are of the opinion that the case here is distinguishable from that of Opinion 24. McBride v. Retirement Board of Allegheny Co., 199 A. 130, relied upon in Opinion 24 supports this distinction. The court in McBride held that an employee retired under the system of one political subdivision did not waive his retirement allowance by becoming employed by the State.

You inquire especially as to the effect of Section 169.570 where a teacher seeks to retire under one system while continuing in an employment covered by another system.

Section 169.570 provides in part:

"1. An employee having five or more years of membership service under one of the Missouri retirement systems as provided by sections 169.010 to 169.130, 169.270 to 169.400 or 169.410 to 169.540, who is subsequently employed in a position covered by another of said Missouri retirement systems, may leave his contributions with the system under which he was first employed and be eligible to receive a benefit based upon his services under that system when he becomes eligible for a service

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retirement benefit from another of said Missouri retirement systems or upon having reached retirement age having previously retired on disability. In event the member does not become eligible for a retirement benefit he shall be entitled to a refund of his contributions with interest upon demand, or to such other benefits as may be provided by law."

The short answer to your question is: If a member of one of the teachers' retirement systems meets the requirements for retirement contained in the statutes particularly applicable to that system (Sections 169.010 - 169.130 as to the State system), as though Section 169.570 had never been enacted, then he is eligible to receive his retirement allowance although presently employed in a position covered by one of the other teacher's retirement systems of this State. Conversely, if he is not qualified for retirement without relying upon the additional rights granted by Section 169.570, then he is not entitled to a retirement allowance under any system until he becomes eligible for service retirement under the system in which he is last employed.

We interpret Section 169.570 (1) as enacted for the purpose of permitting teachers to preserve membership in one system upon leaving that system for an employment covered by one of the other systems. This obviously is to allow Missouri teachers to seek employment anywhere in the State without jeopardizing their retirement rights.

Some hypothetical case illustrations:

1. A member of the State system retires under the State system. Thereafter, he takes an employment not covered by the State system. He is entitled to receive his retirement allowance from the State system while continuing the employment. Section 169.060(2) RSMo.

2. A member of the State system has 20 years creditable service but before reaching retirement age leaves the State system for an employment not covered by the State system. Upon reaching retirement age he is eligible to receive a retirement allowance although continuing in the employment. Section 169.070(6) gives a member with 20 years creditable service the right to keep his membership although not employed in a position covered by the system.

3. A member of the State system has more than five but less than 20 years creditable service and leaves the State system before retirement age for employment not covered by the State system. He reaches a retirement age within four years of leaving the State system. Upon reaching a retirement age he is eligible to receive a retirement allowance although continuing in the employment.

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Section 169.050(5) provides:

"5. Membership shall be terminated by failure of a member to be a public school employee under this system for more than four of any five consecutive years, by death, withdrawal of contributions, or retirement based on either age or disability."

The answer in the three above illustrations is the same whether the subsequent employment is covered by the Kansas City or St. Louis system or is an employment not covered by any Missouri retirement system.

4. A member of the State system has more than five but less than twenty years creditable service and leaves the system prior to retirement age. He does not reach a retirement age until more than four years after leaving. If after leaving the State system he is subsequently employed in a position covered by the Kansas City or St. Louis system, he is eligible to receive a retirement allowance from the State system only if and when he becomes eligible for retirement from the later system. Section 169.570(1). If, after leaving the State system he is not subsequently employed in a position covered by the Kansas City or St. Louis system, his membership in the State system terminates after an absence of more than four of five consecutive years. Section 169.050(5).

The answers to each of the above illustrations are comparably applicable to members of the Kansas City or St. Louis system who subsequently come under the State system; except of course, the membership service and retirement age figures to the particular system considered would have to be changed in each illustration.

CONCLUSION

Therefore, it is the opinion of this office that:

1.) A member of a teachers' retirement system of this State who meets the requirements for retirement contained in the statutes particularly applicable to that system, i.e., as though Section 169.570(1), RSMo 1959, had never been enacted, is eligible to receive a retirement allowance from that system although employed in a position covered by one of the other systems;

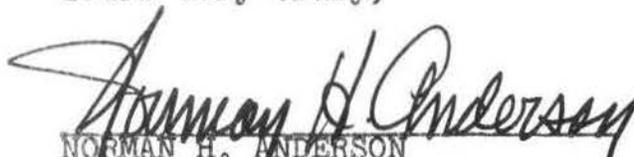
2.) Conversely, a member of a teachers' retirement system of this State who cannot qualify for retirement is not eligible for a retirement allowance under the earlier system under which he was employed until, and only if, he becomes eligible for service

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retirement under the system in which he is last employed (except those having previously retired on disability become eligible upon reaching retirement age).

The foregoing opinion, which I hereby approve, was prepared by my assistant, Louis C. Defeo, Jr.

Yours very truly,


NORMAN H. ANDERSON
Attorney General