

OPINION NO. 209
Answered by Letter
(WILSON)

August 15, 1966

FILED
209

Honorable Elva D. Mann
Representative, Polk County
Missouri House of Representatives
Aldrich, Missouri

Dear Mr. Mann:

This is in response to your request for an opinion from this office regarding the University of Missouri retirement plan. The question which you raise is whether the General Assembly can, under Article III, Sections 38a and 39, appropriate money to the curators of the University of Missouri, a portion of which funds is used to provide funds for the University retirement system. You inform us that this system is not contributed to by employees of the University.

It is the opinion of this office that such an appropriation is valid under the Constitution of Missouri.

The following are the pertinent constitutional and statutory provisions:

Article III, Section 38a.

"The General Assembly shall have no power to grant public money or property, or lend or authorize the lending of public credit to any private person, association or corporation, excepting aid in public calamity, and general laws providing for pensions for the blind, for old-age assistance, for aid to dependent or crippled children or the blind, for direct relief, for adjusted compensation, bonus or rehabilitation for discharged members of the armed services of the United States who were bonified residents of this state during their service and for rehabilitation of other persons. . . "

Honorable Elva D. Mann

Article III, Section 39.

"The General Assembly shall not have power;

(1) to give or lend or to authorize the giving or lending of the credit of the state in aid or to any person, association, municipal or other corporation;

(2) To pledge the credit of the state for the payment of the liabilities present or prospective, of any individual, association, municipal or other corporation; . . . "

Article VI, Section 25.

"--No county, city or other political corporation or subdivision of the state shall be authorized to lend its credit or grant public money or property to any private individual, association or corporation, except that the general assembly may authorize any municipality to provide for the pensioning of the salaried members of its organized police force or fire department and the widows and minor children of the deceased members, and may authorize any city of more than 40,000 inhabitants to provide for the pensioning of other employees, and the widows and minor children of deceased employees, and may also authorize payments from any public funds into a fund or funds for paying benefits upon retirement, disability or death to persons employed and paid out of any public fund for educational services, and to their beneficiaries or estates."

Section 172.300, RSMo 1959:

"The curators may appoint and remove, at discretion, the president, deans, professors, instructors and other employees of the university; define and assign their powers and duties, and fix their compensation, and such compensation may include payments under, or provision for, such retirement, disability, or death plan or plans as the curators deem proper for persons employed by the university and paid out of any of its public funds for educational services, their beneficiaries or estates, and the curators may administer such plan or plans under such rules and regulations as they deem proper; and for these purposes the curators may use state-appropriated or other public funds under their control and pay or transfer such funds into a fund or funds for paying such benefits, and they may enter into agreements for and make contributions to both voluntary and statutory plans for paying such benefits."

Honorable Elva D. Mann

The constitutional authority of the Board of Curators to set up and provide for a University retirement system is found in Article VI, Section 25, quoted above, and more specifically, that portion of Section 25 providing that the General Assembly may authorize payments from any public funds into a fund or funds for paying benefits upon retirement to persons employed and paid out of any public fund for educational services. We note that there is nothing in this section which would indicate that the General Assembly must require matching payments by the specified employees.

Article VI, Section 25, was taken from Article IV, Section 47a, Missouri Constitution, 1875, providing:

"Nothing in this Constitution contained shall be construed as prohibiting payments, from any public funds, into a fund or funds, for paying benefits, upon retirement, disability, or death, to persons employed and paid out of any public fund, for educational services, the beneficiaries, or their estates."

This provision was adopted as an amendment to the Constitution of 1875, on November 3, 1936.

Section 172.300, quoted above, specifically allows the curators to provide for retirement "as the curators deem proper for persons employed by the university and paid out of its public funds. . . ." Thus, it appears that the General Assembly, in recognition of the fact that, under Article VI, Section 25, it "may authorize" the payment for public funds for the purpose of paying retirement benefits, has passed Section 172.300, specifically providing that the curators may make such retirement payments.

In Conclusion, it is the opinion of this office that the General Assembly may, under Article VI, Section 25, of the Missouri Constitution, appropriate money to the Board of Curators of the University of Missouri, a portion of which may be used, at the discretion of the Board, for providing retirement benefits for University employees.

Very truly yours,

NORMAN H. ANDERSON
Attorney General

DRW/jlf