

OPINION NO. 552 (1966)  
111 (1967)  
Answered by Letter--  
Wilson

January 24, 1967

Honorable Thomas A. Walsh  
Representative, St. Louis City  
5850 Elizabeth  
St. Louis, Missouri



Dear Representative Walsh:

This is in answer to your request for an official opinion from this office dated December 15, 1966, in which you inquire whether a retired State Highway Patrolman now employed by the Department of Revenue is entitled to draw a pension from the Highway Employees and Highway Patrol Retirement System while he is employed by the Revenue Department.

We understand that this individual was retired from the State Highway Patrol prior to entering his current employment with the Department of Revenue.

Section 104.330, RSMo 1959, provides in part:

"1. As an incident to his contract of employment or continued employment, each employee of the state shall become a member of the system on the first day of the first month following the effective date of sections 104.-310 to 104.550, and every person thereafter becoming an employee shall become a member at the time of employment. \* \* \* "

Under this provision, one must be an "employee" in order to become a member of the Missouri State Employees' Retirement System. Therefore, we look at the definition of "employee" as defined in this chapter.

Section 104.310, RSMo 1959, defines the term "employee" as follows:

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"(15) 'Employee', any elective or appointive officer or employee of the state who is employed by a department and earns a salary or wage in a position normally requiring the actual performance by him of duties during not less than one thousand five hundred hours per year, including each member of the general assembly, but not including any employee who is covered under some other retirement or benefit fund to which the state is a contributor, except this definition shall not exclude any employee as defined herein who is covered only under the Federal Old Age and Survivors' Insurance Act, as amended. As used in sections 104.310 to 104.550, the term 'employee' shall include civilian employees of the Army National Guard or Air National Guard of this state who are employed pursuant to section 709 of title 32 of the United States Code and paid from federal appropriated funds; \* \* \* "

Under this definition, an employee who is covered under some other state retirement fund is specifically removed from the definition of "employee" as that term is used in Sections 104.310 to 104.550, which are the sections creating and defining the powers and duties of the Missouri State Employees' Retirement System.

In the case under inquiry, the retired State Highway Patrolman does not fit the definition of employee as set out above for the reason that he is covered under another retirement fund to which the state is a contributor, i.e., the Highway Employees and Highway Patrol Retirement System. Since he is not an employee as that term is defined, he does not become a "member" of the State Employees' Retirement System since, under Section 104.330, supra, only an "employee" may become a "member".

We are cognizant of the fact that Section 104.380, Subsection 4, RSMo 1959, provides that a retired member shall not continue in or be employed by a department for which a compensation is paid to the retired members. However, as noted above, because of the manner in which the term "employee" is defined, the individual here under consideration has never become a "member", and, therefore, Section 104.380 raises no barrier to his receiving retirement payments from the Highway Employees and Highway Patrol Retirement System.

We are also aware of Section 104.600, RSMo 1959, which allows an employee of either the Highway Employees and Highway Patrol Retirement System or the Missouri State Employees' Retirement System

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to transfer accumulated contributions and prior service credit from one system to the other if he becomes a member of the other system within 30 days after leaving his employment. We assume no such transfer has been attempted. Therefore, we do not pass on the applicability of this section to the instant situation.

CONCLUSION

It is the opinion of this office that a retired member of the Highway Employees and Highway Patrol Retirement System, who, subsequent to his retirement, becomes employed by the Department of Revenue, is entitled to continue to receive retirement benefits from the Highway Employees and Highway Patrol Retirement System.

Very truly yours,

NORMAN H. ANDERSON  
Attorney General

DRW/jlf