

STATE EMPLOYEES' RETIREMENT
SYSTEM:
LEGISLATURE:
RETIREMENT:

Increase in monthly retirement benefits as provided for in Senate Bill No. 360 of the 74th General Assembly, Section 104.390, RSMo Cum. Supp., 1967, is applicable to prior terms of office, served by present and former members of the legislature who are members of the state retirement system and eligible for future retirement, in computing the minimum retirement annuity of such members.

OPINION NO. 66-1968

September 12, 1968



Mr. Edwin M. Bode, Secretary
Missouri State Employees'
Retirement System
Capitol Building
Jefferson City, Missouri 65101

Dear Mr. Bode:

This is to acknowledge receipt of your request for a formal opinion from this office which reads in part as follows:

"I would like to request an official opinion from the Attorney General's Office in regard to Senate Bill 360. * * * My question is whether or not Senate Bill 360 should be applied retroactively to prior terms of office served by present and former members of the legislature who are still active members of the system, but will be eligible for retirement in the immediate future."

Senate Bill No. 360, which was an amendment of Section 104.390, RSMo Cum. Supp., 1965, provided that the minimum annuity of any member of the retirement system who had served six or more years as a member of the General Assembly and who met the conditions for retirement at or after normal retirement age, would consist of monthly payments made at the rate of \$30.00 (formerly \$25.00) multiplied by the number of biennial assemblies in which he had served. Therefore, the issue for our determination is whether the increase in monthly retirement benefits is to be applied so that prior terms of office served by present and former members of the legislature who are active members of the state retirement system and eligible for future retirement, will be considered in computing the minimum retirement annuity of such members.

Mr. Edwin M. Bode, Secretary

The leading authority on this issue is the case of State v. Missouri State Employees' Retirement System, 362 S.W. 2d 571. In this case, it was held by the Supreme Court of Missouri that a 1961 amendment to the 1957 statute permitting payment of increased benefits to retired members (emphasis ours) of the Missouri State Employees' Retirement System would require taking a portion of the fund existing when the amendment was passed to pay the increase and would impair a contract with active members in violation of the Constitution. Thus, it is clear that the increase in monthly retirement benefits does not apply to previously retired members of the General Assembly.

It is submitted that the factual situation as presented is distinguishable from the above case in that the present and former members of the legislature have not as yet retired, but are still active members in the state retirement system and continue to make contributions to the state retirement fund. In addition, there is authority to support the proposition that the status of an applicant for a state employees' retirement allowance must be determined by the provisions of the statute in effect when the application for the allowance is filed. See 81 C.J.S., States, Section 94.

Therefore, it is our belief that an active member of the retirement system who has contributed to the fund through the years is entitled to a retirement allowance in accordance with the statutory provisions presently in effect.

CONCLUSION

It is the opinion of this office that the increase in monthly retirement benefits as provided for in Senate Bill No. 360 of the 74th General Assembly, Section 104.390, RSMo Cum. Supp., 1967, is applicable to prior terms of office, served by present and former members of the legislature who are members of the state retirement system and eligible for future retirement, in computing the minimum retirement annuity of such members.

The foregoing opinion, which I hereby approve, was prepared by my assistant, B. J. Jones.

Yours very truly,



NORMAN H. ANDERSON
Attorney General