

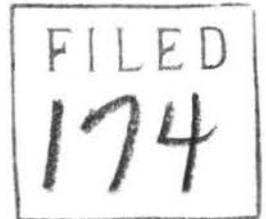
STATE EMPLOYEES'
RETIREMENT SYSTEM:
LEGISLATURE:
RETIREMENT:

A refund of accumulated contributions under Section 104.380, RSMo. Cum. Supp. 1967 for services rendered before October 13, 1967 by a member who retired before October 13, 1967 and

who is presently receiving a retirement annuity from the Missouri State Employees' Retirement System, would be in violation of Article I, Section 13 of the Missouri Constitution of 1945.

OPINION NO. 174-1968

September 19, 1968



Mr. Edwin M. Bode, Secretary
Missouri State Employee's
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 as follows:

"I would like to request a formal opinion in regard to Section 104.380, paragraph 3 as to whether or not a former member of the General Assembly who elects to accept legislative retirement benefits is entitled to a refund of his accumulative contributions made to the retirement fund for services rendered during other periods of state employment before October 13, 1967."

House Bill No. 33 of the 74th General Assembly repealed Section 104.380, RSMo. 1959 relating to the State Employees' Retirement System and enacted in lieu thereof one new section to be known as Section 104.380, relating to the same subject matter. Subsection 3 of Section 104.380, RSMo. Cum. Supp. 1967, now reads as follows:

"3. If a member, after serving six or more years as a member of the general assembly, is elected to a state office or is appointed to a state office or employment, he may, at the end of such term or employment, elect to take on retirement the amount which shall be due him for his creditable service as a

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member of the general assembly or that which would be due him as such officer or employee. If he elects to accept the legislative retirement benefits, the amount of his accumulated contributions to the fund made during such term or employment shall, upon written application, be refunded to him."

The Missouri Supreme Court has taken the position that the legislature has established a comprehensive State Employee Retirement System, participation in which was voluntary, and membership in which created a contractual relationship, between the members and the state. See *State v. Missouri State Employees' Retirement System*, 362 SW2d 571. In this connection, Article I, Section 13 of the Missouri Constitution of 1945 prohibits any law which impairs the obligation of a contract. Therefore, it is our opinion that the primary issue for consideration is whether or not a refund of accumulative contributions made to the retirement fund for services rendered before October 13, 1967, by a member who retired prior to October 13, 1967, and who is now drawing an annuity from the State Retirement System would be in violation of the Missouri Constitution of 1945.

The leading authority on this issue is the case of *State v. Missouri State Employees' Retirement System*, supra. In this case, retired state employees brought an action in mandamus to require the Missouri State Employees' Retirement System to pay such employees an increase in benefits under a 1961 amendment to the 1957 statute.

On page 576 of the opinion, the holding of the court was as follows:

"The present amendment, applying as it purports to do to all members; would necessarily take a portion of the existing fund to pay the increases to retired members. We hold that this would constitute an impairment of the contract in violation of Section 13 of Article I, Mo. Constitution as to all members not retired on October 13, 1961, and who have since continued to contribute."

The Court further held that the payment of the increased benefits to retired members whose status was fixed prior to the effective date of the amendment, October 13, 1961, for no additional consideration, would deplete the fund to a substantial extent, and do so gratuitously.

It is submitted that the same conclusion is applicable to the matter in dispute. The factual situation as presented indicates

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that the member retired prior to October 13, 1967, and in accordance with the provisions of the old law elected to receive his minimum retirement annuity to which he was entitled because of his service as a former member of the legislature rather than a refund of his accumulative contributions.

To hold now that he is entitled to a refund of his accumulative contributions under the present law, for services rendered prior to October 13, 1967, would result in an "increase" in his retirement allowance as it was then provided for under the old law. This would necessarily involve taking a portion of the existing retirement fund to pay the "increase" to a retired member. As a result of the decision in State v. Missouri State Employees' Retirement System supra, it is our belief that a refund of accumulative contributions under such circumstances would constitute an impairment of contract in violation of Article I, Section 13 of the Missouri Constitution of 1945 as to all members not retired on October 13, 1967, and who have since continued to contribute to the Missouri State Employees' Retirement System.

CONCLUSION

It is the opinion of this office that a refund of accumulated contributions under Section 104.380, RSMo. Cum. Supp. 1967, for services rendered before October 13, 1967, by a member who retired before October 13, 1967, and who is presently receiving a retirement annuity from the Missouri State Employees' Retirement System, would be in violation of Article I, Section 13 of the Missouri Constitution of 1945.

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

Yours very truly,

NORMAN H. ANDERSON
Attorney General