

FILED

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February 28, 1969

OPINION LETTER NO. 104

Honorable James F. Flynn
Representative, District 59
State Capitol Building
Jefferson City, Missouri 65101

Dear Mr. Flynn:

This letter is in response to your letter of January 9, 1969, in which you ask for an opinion as to whether increased benefits may legally be paid to persons who have retired and are receiving benefits on the effective date of the increase.

This office has previously advised that retired state employees may not be given increased benefits from public funds after their retirement because to do so would constitute a grant of public money to a private person and a grant of extra compensation, in violation of Article III, Sections 38(a), 39 (3) Missouri Constitution of 1945. Attached are copies of Opinion No. 95, 5-12-61, Wellborn, and Opinion No. 39, 10-19-61, Hemphill.

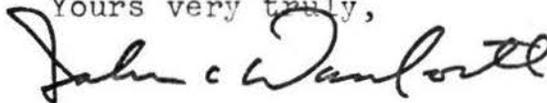
The Missouri Supreme Court, sitting en banc, held, in State ex rel. Breshears v. Missouri State Employees Retirement System, Mo., 362 S.W.2d 571 (1962), that a law increasing retirement benefits, under a system dependent upon voluntary contributions of the participants, could not apply to persons already retired. To do so, the court found, would deplete the funds previously contributed, thereby impairing contract rights vested in other members of the system.

The Breshears case also indicated that a token payment to the system by retired members would not suffice to entitle them to share in future increased benefits. To avoid constitutional objections, each contribution would have to equal the present cash value, determined on an actuarial basis, of the increase to each contributor. See 362, S.W.2d at 577.

Honorable James F. Flynn

For the above reason, the contemplated legislation to increase retirement benefits may not legally apply to persons who have retired and are receiving benefits on the effective date of the increase.

Yours very truly,

A handwritten signature in cursive script that reads "John C. Danforth". The signature is written in dark ink and is positioned above the typed name.

JOHN C. DANFORTH
Attorney General

Enclosure: Opinion No. 95
5-12-61, Wellborn

Opinion No. 39
10-19-61, Hemphill