

PENSIONS:
RETIREMENT:
CONSTITUTIONAL LAW:

An individual who is sixty years of age, with fifteen years of creditable service in the State Retirement System, but who has not retired and is no longer a contributing member of the system, may not

receive an increase in retirement benefits as provided for in House Bill 480 of the Seventy-Fifth General Assembly if such person does not re-enter state employment.

September 16, 1969



OPINION NO. 188

Mr. Edwin M. Bode, Secretary
Missouri State Employees' Retirement System
State 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 an opinion as to whether an individual who is sixty years of age and has been a member of the State Retirement System for fifteen years, but who has not retired and is no longer a contributing member of the system, may receive an increase in retirement benefits from one per cent (1%) to one and one-half per cent (1 1/2%) as provided for in house bill No. 480, upon his retirement."

Senate Substitute for House Bill No. 480 of the Seventy-Fifth General Assembly which will be effective October 13, 1969, among other things repeals Section 104.390, RSMo 1959, and enacts in lieu thereof, one new section which reads as follows:

"The normal annuity of a member shall equal one and one-fourth percent of the average compensation of the member multiplied by the number of years of creditable service of such member; except that the minimum annuity of any legislative member of the state employees' retirement system who has served six or more years as a member of the general assembly and who meets the conditions for retirement at or after normal retirement age shall consist of monthly

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payments made at the rate of thirty-seven dollars and fifty cents multiplied by the number of bi-ennial assemblies in which he has served."
(emphasis ours)

The assumption is made that the opinion request refers to an individual who is not presently employed by the state; and who does not re-enter state employment in the future. We will also assume that the individual has obtained fifteen years of creditable service in state employment as defined in Subsection 10 of Section 104.340, RSMo 1959; and has elected not to withdraw his contributions made to the Retirement System during his period of service.

The leading Missouri authority on the issue presented is the case of State ex rel Breshears v. Missouri State Employees' Retirement System, 3625 S.W.2d 571 (1962). In this decision, it was held by the Supreme Court of Missouri, sitting en banc, that a 1961 amendment to a 1957 statute permitting payment of increased benefits to retired members (emphasis ours) of the Missouri State Employees' Retirement System would take 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 Section 13, Article I, of the Missouri Constitution.

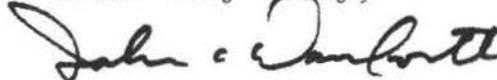
It is submitted that the same consideration is applicable to the matter in dispute. In line with the reasoning in the Breshears case, non-active members, that is those who do not make contributions to the System, would not be entitled to increased retirement benefits as this would necessarily involve taking a portion of the existing retirement fund to pay the "increase" to such non-active members. Therefore, such action would constitute an impairment of contract in violation of Section 13, Article I, of the Missouri Constitution as to all active members who have since continued to contribute to the Retirement System.

CONCLUSION

It is the opinion of this office that an individual who is sixty years of age, with fifteen years of creditable service in the State Retirement System, but who has not retired and is no longer a contributing member of the System, may not receive an increase in retirement benefits as provided for in House Bill 480 of the Seventy-Fifth General Assembly if such person does not re-enter state employment.

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

Yours very truly,



JOHN C. DANFORTH
Attorney General