

Answer by letter-Gardner

February 25, 1970

OPINION LETTER NO. 118

Honorable Lawrence J. Lee  
State Senator, District 3  
506 Olive Street  
St. Louis, Missouri



Dear Senator Lee:

This is in response to your recent letter in which you inquire whether there is any provision for a mandatory retirement age of a special commissioner or referee appointed under provisions of Section 476.450 to 476.510, RSMo.

Section 476.450, RSMo, provides as follows:

"Any person having reached the age of sixty-five years and having in this state served an aggregate of twelve years, continuously or otherwise, as a judge or commissioner of the supreme court, or as a judge or commissioner of any of the courts of appeals, or as a circuit judge, or as a judge of a court of criminal correction, or as a judge of a court of common pleas, or either or both as judge or commissioner of any of said courts, and who shall have ceased to hold such office by reason of the expiration of his term, or voluntary resignation or retirement by reason of having reached the age of seventy-five years, under section 25, article V, of the Constitution of Missouri, shall, if he so elects as hereinafter provided, be made, constituted and appointed a special commissioner or referee for and during the remainder of his life and shall, while he remains a resident of Missouri, be entitled to and shall receive as annual compensation,

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salary or retirement compensation during the remainder of his life a sum equal in amount to one-third the salary or compensation then or thereafter provided for by law for the office from which he has retired, and said sum shall be payable monthly out of the general revenue of the state of Missouri." (Emphasis added)

Section 476.453, RSMo, provides in part as follows:

"Any person having reached the age of sixty-five years and having served in this state an aggregate of twelve years, continuously or otherwise, as a judge or commissioner of any court mentioned in section 476.450, or having served in this state continuously for six years as a judge of any court mentioned in section 476.450 prior to the effective date of this section, shall, if he so elects, be made, constituted and appointed a special commissioner or referee for and during the remainder of his life, . . ."

Section 476.455, RSMo, provides as follows:

"Any person having reached the age of sixty-five years, and having served an aggregate of twelve years continuously or otherwise as a judge of any of the courts whose judge or judges are required to be selected under the provisions of section 29, article V of the constitution, shall have the same rights and privileges upon the same conditions as are provided for the judges and commissioners specified in section 476.450."

Section 476.456, House Bill No. 216, 75th General Assembly provides as follows:

"1. Any person whether or not a licensed attorney having reached the age of sixty-five years, and having any prior judicial service except as a police judge, or justice of the peace of twelve years or more at the time of the passage of this act or having served an aggregate of twelve years continuously or otherwise as judge or commissioner of any of the courts provided for under the provisions

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of sections 16 and 18, article V of the constitution, shall have the same rights and privileges upon the same conditions as are provided for the judges and commissioners specified in section 476.450.

"2. Any judge presently serving as a magistrate or probate judge is entitled to include any time he has served as a justice of the peace of this state in computing the prior judicial service required by this section."

Thus, the principle of judicial retirement in Missouri has been established by the legislature. In this law the elements of judicial retirement include the provision that the former judge remain a special commissioner, if he so elects, for the remainder of his life. This is consistent with the provisions of Section 476.510 which provides that a person who elects to be made and appointed a special commissioner or referee and who accepts the benefits of such appointment ". . . shall not thereafter engage in the practice of law." and Section 476.460, RSMo 1959, which provides as follows:

"Each such special commissioner or referee shall be subject to call by the supreme court for temporary duty in any court of the state to render such duties as may be directed by the supreme court or as may now or hereafter be prescribed by law."

We note that pursuant to this section special commissioners who formerly were judges or commissioners of the appellate courts have continued to do substantial amounts of work for their courts.

It is therefore the opinion of this office that there is no provision for a mandatory retirement age of a special commissioner.

Yours very truly,

JOHN C. DANFORTH  
Attorney General