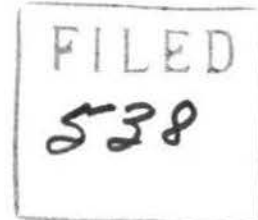


October 29, 1970

OPINION LETTER NO. 538
Answer by letter - Jones

Mr. G. L. Donahoe
Executive Secretary
The Public School Retirement
System of Missouri
P. O. Box 268
Jefferson City, Missouri 65101



Dear Mr. Donahoe:

This letter is to acknowledge receipt of your request for an opinion in regard to whether or not the employees of the Board of Trustees of the Public School Retirement System are covered under the provisions of Senate Bill 213 relating to workmen's compensation. If such employees are not covered under Senate Bill 213, you also request what procedure would be necessary to secure coverage.

Senate Bill 213 as passed by the Seventh-fifth General Assembly and which became effective on October 13, 1969, provided that the provisions of Chapter 287, RSMo, governing workmen's compensation was extended to include state employees. The term "state employee" is defined in Section 105.800, RSMo 1969, to mean:

". . . any person who is an elected or appointed official of the state of Missouri or who is employed by the state and earns a salary or wage in a position normally requiring the actual performance by him of duties on behalf of the state."

In addition, Section 105.810, RSMo 1969, provides that the

Mr. G. L. Donahoe

State of Missouri shall have the option to become a self-insurer and assume all liability imposed by Chapter 287, RSMo, or to purchase insurance in companies licensed to write workmen's compensation insurance in this state.

In accordance with Sections 169.010 through 169.130, RSMo 1969, the Board of Trustees is responsible for the administration and operation of a retirement system for teachers of all school districts located in the State of Missouri with exception of the cities of St. Louis and Kansas City. Sections 169.600 through 169.710, RSMo 1969, also provides that the Board of Trustees shall be responsible for the operation and administration of a retirement system for non-teacher employees of all school districts located in the State of Missouri, with the exception of the cities of St. Louis and Kansas City. Section 169.030, RSMo 1969, provides that funds required for the operation of the teacher retirement system shall come from contributions made in equal amounts by members of the system and their employers. Likewise, Section 169.620, RSMo 1969, provides that funds required for the operation of the non-teacher school employees' retirement system shall come from contributions made in equal amounts by employees of the school districts and their employers. Sections 169.040 and 169.630, RSMo 1969, provide that these funds belong to each retirement system and do not become funds of the State of Missouri and may not be comingled with state funds. Subsection 10 of Section 169.020, RSMo 1969, provides that the Board of Trustees shall employ a full time secretary, not one of their number, who shall be the executive officer of the Board. Other employees of the Board shall be chosen only upon the recommendation of the secretary. The law does not specifically provide that payment of employees of the Board of Trustees shall be made from any particular funds of the system. However, it is our understanding that in actual practice, the operating expenses of the system, including salary payments to employees of the system, are made from interest earned on invested funds of the system.

In Attorney General Opinion No. 3, Atterbury, 10-7-57, it was held that the director and employees of the Public School Retirement System did not qualify to become members of the Missouri State Employees' Retirement System (copy attached). The reasoning of the opinion was that with the establishment of the Teacher Retirement System, it received no appropriations from the state, but was an entirely self-sufficient unit operating on its own funds, which were by statute declared not to be state funds. Payment of administrative expenses and the compensation of the director and his employees were made from the fund, not from appropriations, and therefore the System could

Mr. G. L. Donahoe

not qualify under the definition of "department" in the provisions of the Missouri State Employees' Retirement Act.

As indicated previously, Section 1 of Senate Bill 213 defines a state employee as one employed by the state and who earns a salary or wage in a position normally requiring the actual performance by him of duties on behalf of the state. Section 2 of Senate Bill 213, provides that the State of Missouri shall have the option to become a self-insurer and assume all liability under the Workmen's Compensation Act, or to purchase insurance in companies licensed to write workmen's compensation insurance. It is our view that it was the intent of the legislature to pay out of state appropriated funds the workmen's compensation claims or workmen's compensation insurance premiums only for employees who are paid by the state. In view of the attached opinion and statutory provisions relating to the Public School Retirement System, it is our view that the employees of the Board of Trustees of the Public School Retirement System are not covered under Senate Bill 213.

Having decided that the employees of the Board of Trustees of the Retirement System are not covered under Senate Bill 213, we now consider what procedure would be necessary to secure coverage under the Workmen's Compensation Act.

The Workmen's Compensation Law, Section 287.090, RSMo 1969, provides:

"1. Sections 287.050 to 287.080 and 287.120 shall not apply to any of the following employments:

"(1) Employments by the state, county, municipal corporation, township, school or road, drainage, swamp and levee districts, or school board, board of education, regents, curators, managers, or control commission, board or any other political subdivisions, corporation, or quasi corporation thereof;

* * *

"2. Any employer in this section exempted from the operation of sections 287.050 to 287.080 and 287.120 may bring himself within the provisions of this chapter by filing with the division notice of his election to accept the provisions, or by the purchasing and accepting

Mr. G. L. Donahoe

by the employer of a valid compensation insurance policy, and the election by the purchase and acceptance of the insurance policy shall include the exempted employments described in subdivisions (1), (2), (3), and (4) of subsection 1 if such intent is shown by the terms of the policy. The election shall take effect and continue from the date of filing with the division by the employer of his election to accept liability under this chapter, or from the effective date of the insurance policy. Any employer electing to become liable under this chapter may withdraw his election by filing with the division a notice that he desires to withdraw his election, which withdrawal shall take effect thirty days after the date of the filing, or at such later date as may be specified in the notice of withdrawal."

Section 287.030, RSMo 1969, defines the word "employer" as follows:

"1. The word 'employer' as used in this chapter shall be construed to mean:

* * *

"(2) The state, county, municipal corporation, township, school or road, drainage, swamp and levee districts, or school boards, board of education, regents, curators, managers or control commission, board or any other political subdivision, corporation, or quasi corporation, or cities under special charter, or under the commission form of government, which elects to accept this chapter by law or ordinance."

As a result of the foregoing statutory provisions, it would appear that the employees could be subject to Chapter 287 if the Board of Trustees files an election with the State Division of Workmen's Compensation to accept the provisions of Subsection 2 of Section 287.090, RSMo 1969. In this regard an action was brought in the case of Hickey v. Board of Education of the City of St. Louis, 256 S.W.2d 775, (Mo. En Banc 1953) to enjoin the expenditure of funds to procure insurance covering the liability of a city board of education under the Workmen's Compensation Act.

Mr. G. L. Donahoe

However, the Supreme Court held that the proposed expenditure was authorized by the constitution and Sections 287.030 and 287.090, RSMo 1969.

We therefore conclude that the Board of Trustees of the Public School Retirement System has the authority to elect to accept the provisions of Chapter 287, relating to the Missouri Workmen's Compensation Law, for the benefit of its employees.

Very truly yours,

JOHN C. DANFORTH
Attorney General

Enclosure:

Op. No. 3
10-7-57, Atterbury