

November 8, 1972

OPINION LETTER NO. 173
Answer by letter-Jones

William G. Brooks
Acting President
Lincoln University
Jefferson City, Missouri 65101

FILED

173

Dear Dr. Brooks:

This letter is to acknowledge receipt of a request from your predecessor for an opinion from this office which reads as follows:

"Are the 42 Lincoln University employees with fifteen or more years of service credit in the Missouri State Employees Retirement System prior to January 1, 1970; whose contributed funds still remain in the State Retirement System Pension Fund; who are, and have been, continuously employed by the State (although no longer contributing to the State Retirement System); and who must apply to the State Retirement System for retirement pension at the time of their retirement, eligible for refund of their contributions in addition to their normal pension, provided they retire on or after September 1, 1972 when the new law becomes effective?"

Senate Bill No. 548 which was passed by the 75th General Assembly and signed by the Governor, repeals certain statutory provisions of the Missouri State Employees Retirement System and enacts in lieu thereof new sections relating to the same subject matter. In this regard, subsection 4(1) of Section 104.330 of Senate Bill No. 548 provides as follows:

"4. (1) Any member, whose employment terminated on or after September 1, 1972 and (1) who had served six or more creditable service years as a member of the general assembly

Dr. William O. Brooks

and who has not been refunded his accumulated contributions to the fund, or (2) who was other than a member of the general assembly and who had served fifteen or more creditable service years as an employee, or who had served ten or more creditable service years as an employee and was at least thirty-five years of age at the date of termination of employment, and has not been refunded his accumulated contributions to the fund, if any, shall be entitled to a deferred normal annuity based on his creditable service, average compensation and the set in effect at the time his employment was terminated."

Also, subsection 2 of Section 104.372 of Senate Bill No. 548 provides as follows:

"2. When a member who was an employee on August 31, 1972, thereafter retires, or when a former member who has been restored creditable service in accordance with the provisions of subsection 4 or 6 of section 104.350 retires, or who is entitled to a deferred annuity under subsection 4 of section 104.330, the board shall pay him an amount equal to his accumulated contributions and credited interest to the date of his retirement. This amount is in addition to any retirement benefits to which he is entitled; but, the provisions of this subsection shall not apply to members who elect to receive benefits because of service in the general assembly."

The assumption is made that the opinion request refers to individuals who will not reenter state employment in the future. It is also our understanding that the individuals in question will retire on or after September 1, 1972, and will otherwise meet the eligibility requirement of Section 104.330 of Senate Bill No. 548.

In connection with the above statutes, there is authority for the proposition that statutes in pari materia must be read and construed together in order to keep all provisions of law on the same subject in harmony so as to work out and accomplish the central idea and intent of the lawmaking branch of state government. State ex rel. Day v. County Court of Platte County, 442 S.W.2d 178 (K.C. Mo.App. 1969). Therefore, when the refund provisions of subsection 2 of Section 104.372 are considered in relation to the eligibility provisions of subsection 4(1) of Section 104.330, it is our view that the clause "whose employment terminated on or after September 1, 1972" refers to the termination of employment with an agency that

Dr. William G. Brooks

is actively participating in the Missouri State Employees Retirement System. It should be noted that if the construction were otherwise, then individuals in the same category as those presently being considered, but who had taken a job with a private employer, would also be entitled to a refund of their contributions. We do not believe that the legislature intended such a result. Lastly, in Opinion Letter No. 22, Bode, 4-26-71 (copy enclosed), it was held that the amount of retirement benefits due a member of the retirement system who had ceased to be an employee of the state sometime prior to his normal retirement date, but was at least sixty years of age and had accumulated fifteen or more years of creditable service or served six or more years as a member of the General Assembly, and had not been refunded his accumulated contributions to the fund, were determined under the law in effect at the time the member ceased to be an employee of the state. It is submitted that a similar conclusion is applicable to individuals who terminate employment with agencies not actively participating in the Missouri State Employment Retirement System.

In conclusion, it is our opinion that the Lincoln University employees in question will not be eligible for a refund of their contributions in addition to their normal retirement benefits, provided they retire after September 1, 1972.

Very truly yours,

JOHN C. DANFORTH
Attorney General

Enclosure: Op. Ltr. No. 22
4-26-71, Bode