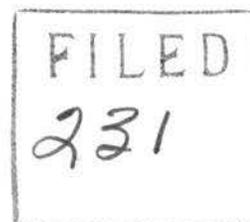


December 1, 1972

OPINION LETTER NO. 231  
Answer by letter-Jones

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



Dear Mr. Donahoe:

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

"We need your opinion and advice in response to the following procedural questions which, it appears, must be answered before we can implement the provisions of CCS HB613 as enacted by the 76th General Assembly and approved by the Governor.

"1. Is the Board of Trustees obligated to inform all eligible retired members of their eligibility and to provide each an application for employment?

"2. After an application for employment has been received, will it be necessary for the Board of Trustees to have a completed contract of employment signed by the applicant?

"3. a. If a retired member elected to receive a reduced benefit under either Option 1 or Option 2, how will the determination of eligibility be determined; i.e., on the basis of the amount which

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the retired member would have received if he had requested Regular Retirement, or on the basis of the amount which he is receiving with the election of an option?

b. Will the response to (a) be applicable in the case of an individual who retired prior to the attainment of normal retirement age and received a reduced benefit?

"4. How will the determination of eligibility be made for retired members who last served, before retirement, in positions in which the members contributed only two-thirds of the contribution rate and received only two-thirds of the benefits as provided for in Section 169.070.10?

"5. Will the payments made to the retired members be considered as compensation for services rendered or as gratuities (this would appear to be a decision necessary to a determination of the withholdings which should be made from the individual payments)?

"6. If the payments are considered as compensation, will the following retired members be eligible to file an application for employment:

a. One who has been adjudged legally incompetent.

b. One who has been retired with a disability retirement allowance.

c. One who is living out of Missouri."

Section 1 of Conference Committee Substitute for House Bill No. 613, as enacted by the 76th General Assembly and approved by the Governor, reads as follows:

"1. Any retired teacher now receiving retirement benefits, who served five years or more as a teacher in the public schools of

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this state and who retired after June 30, 1957, and prior to January 1, 1971, under the provisions of chapter 169, RSMo, shall, upon application to the retirement system from which he is receiving retirement benefits be employed by that retirement system as a special school advisor and supervisor. Any person so employed shall perform such duties as the board of trustees of the retirement system of which he becomes an employee directs, and shall receive a salary of five dollars per month for each year of teaching service not to exceed seventy-five dollars per month, payable by the retirement system as part of its administrative costs, but the payment to the retired person for such services, together with the retirement benefits he receives under chapter 169, RSMo, shall not exceed one hundred fifty dollars per month. The employment provided for by this act shall in no way affect any person's eligibility for retirement benefits under chapter 169."

In response to your first question, while there is no specific requirement in Section 1 of Conference Committee Substitute for House Bill No. 613, it is our view that there is an implied requirement that the system notify eligible members for the reason that the system has access to all of the addresses of retired members based upon the records in its office and a member may not otherwise know of his eligibility. In addition, Section 1 of the bill provides that a person shall upon application be employed by the retirement system and paid for such employment. It is, therefore, our view that such clear statutory language means that such persons are to be employed only upon application and that the employment should commence only when such application for employment is received by the system. However, it should also be noted that if any eligible individuals have previously sent letters to the system asking that they be employed, then it is our view that this is sufficient for them to be considered to have been employed as of the date the letters were received by the system.

In regard to your second question, it is our view that it will not be necessary for the board of trustees to have a contract of employment signed by the applicant. The basic rule of statutory construction is to seek the intention of the lawmakers and, if possible, to effectuate that intention, and the court should ascertain the legislative intent from the words used, if possible, and should ascribe to the language used, its plain and rational meaning. State ex rel. Clay Equipment Corporation v. Jensen, 363 S.W.2d 666

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(Mo. Banc 1966). Under such circumstances, Section 1 provides that a qualified retired teacher ". . . shall, upon application to the retirement system from which he is receiving retirement benefits be employed by that retirement system as a special school advisor and supervisor. . . ." However, there is no express requirement that a retired teacher complete a contract of employment. Therefore, after an application for employment has been received, it is our opinion that it will not be necessary for the board of trustees to have a contract of employment signed by the applicant.

We next consider your third and fourth questions. Subsection 1 of Section 169.070, RSMo 1969, provides that a member may retire whose age at retirement is sixty years or more and whose creditable service is five years or more, or whose creditable service is forty years or more. Subsection 2 of Section 169.070, RSMo 1969, provides that a member whose age at retirement is sixty years or more or whose creditable service is forty years or more may elect to receive a reduced allowance under an option and thereby provide an allowance for a designated beneficiary who may survive at his death. Under Option 1, the payment to the member and to the designated beneficiary will be in the same amount. Under Option 2, the payment to the designated beneficiary will be one-half the amount of the payment to the member. The election of the option must be made in the application for retirement which must be filed with the retirement office prior to the date on which retirement of the member is to become effective. Subsection 3 of Section 169.070, RSMo 1969, also provides that a member may retire if less than sixty years of age and whose creditable service is thirty years or more and receive the actuarial equivalent of the allowance to which his creditable service would entitle him if his age were sixty. Lastly, subsection 10 of Section 169.070 provides that the contribution rate for a member of the system for whom Federal Old Age and Survivors Insurance Tax is paid from state and local funds on account of employment entitling him to membership in the system, is two-thirds of the rate for the other members of the system. The benefits for such a member are two-thirds of the benefits provided for the other members of the system because of services after July 1, 1961. Also, if a member made retroactive contributions because of salaries received from employment entitling him to membership in the system and from Federal Old Age and Survivors Insurance Tax was paid from state or local tax funds during the period July 1, 1957 to July 1, 1961, the benefits for the entire period of creditable service is two-thirds of the benefits for other members of the system. If a member did not elect to make retroactive contributions, the benefits because of services prior to July 1, 1961, are determined in accordance with the provisions of the law in effect prior to that date.

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In connection with the above, Section 1 of House Bill No. 613 provides that "Any retired teacher now receiving retirement benefits, . . . shall, upon application to the retirement system from which he is receiving retirement benefits be employed by that retirement system . . . ." (emphasis ours). In this regard, it should be pointed out that Section 1 of House Bill No. 613 does not specifically provide that a member must be receiving a regular retirement allowance to be eligible for employment, but only that he is receiving retirement benefits, consequently, there is authority for the proposition that where statutes are plain, unambiguous, and simple, there is no room for construction and they must be applied by courts as they are written by the legislature. United Air Lines, Inc. v. State Tax Commission, 377 S.W.2d 444 (Mo. Banc 1964). Therefore, in response to questions 3 and 4, it is our opinion that a member's eligibility for employment under House Bill No. 613 is determined on the basis of the amount which the member is actually receiving and not on the basis of the amount which the retired member would have received if he had requested a regular retirement allowance. However, it should also be noted that House Bill No. 613 applies only to retired teachers and does not apply to survivors of a teacher if the member elects one of the options under subsection 2 of Section 169.070, RSMo 1969.

We next consider your fifth question in regard to whether or not payments to retired members under House Bill No. 613 are subject to withholding for social security and federal income tax purposes. In this regard, it is our view that any questions as to whether such amounts are subject to federal income tax and social security withholdings should be directed to Mr. Hiram Ford, District Manager, Social Security Administration, 113 West Miller Street, Jefferson City, Missouri, and the District Director of Internal Revenue, 1114 Market Street, St. Louis, Missouri. However, in order to expedite the implementation of House Bill No. 613, it is our view that the retirement system should begin making payments, and notify eligible members that it is doing so, without making deductions for social security or federal income tax withholdings, pending a final decision from the federal authorities.

Lastly, we consider your sixth question. In this regard, it is our view that it was the intent of the legislature that any retired teacher now receiving retirement benefits, and who meets the other qualifications of Section 1 of House Bill No. 613 is eligible to file an application for employment. Therefore, it is our opinion that the guardian of one who has been adjudged legally incompetent, or one retired with a disability retirement allowance, or

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one who is living out of Missouri, is eligible to file an application for employment.

Yours very truly,

JOHN C. DANFORTH  
Attorney General