STATE EMPLOYEES' RETIREMENT SYSTEM: During the interval until
SUPERINTENDENT OF INSURANCE: January 1, 1975, the two
RETIREMENT: elected members' terms on
PENSIONS: the board of trustees of
GOVERNOR: the Missouri State Employees'
Retirement System shall be
served by the Superintendent of Insurance and one appointment to
be made by the Governor.

OPINION NO. 127

October 23, 1973

Mr. Charles Valier
Member, Board of Trustees of the
Missouri State Employees' Retirement System
Executive Office, State Capitol Building
Jefferson City, Missouri 65101

Dear Mr. Valier:

This is to acknowledge receipt of your request for a formal
opinion in regard to the following:

"1. Whether or not the Board of Trustees of
the Missouri State Employees Retirement
System had the authority under the pro-
visions of Section 104.450 of Senate
Bill 548 which became effective on Au-
gust 13, 1972, to appoint Mr. Proctor
N. Carter and Mr. Herman Julien on Decem-
ber 1, 1972, to serve on the Board of
Trustees, as the two elected members un-
til January 1, 1975.

"2. If the Board of Trustees did not have
the authority to make these appoint-
ments, I would appreciate your opinion
as to who has the authority to make
these appointments."

It is our understanding that the individuals referred to were
appointed members of the board of trustees under the former provi-
sions of Section 104.450, RSMo 1969.

Under this statutory provision, Mr. Carter was appointed by
the former governor on October 17, 1969, for a term ending August 29,
1975, and Mr. Julien was appointed by the former governor on July 13,

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1971, for a term ending August 29, 1977. Subsequently, Senate Bill No. 548, 76th General Assembly became effective on August 13, 1972.

Thereafter, we are advised that on November 14, 1972, the former governor informed the Secretary of State that he had appointed Mr. Julien and Mr. Carter as members of the board of trustees, for terms ending January 1, 1975, and until their successors were duly appointed and qualified, as provided in Senate Bill No. 548, 76th General Assembly.

The minutes of the board of trustees reveal that a motion was made on December 1, 1972, pursuant to the provisions of Section 104.450 of Senate Bill No. 548, 76th General Assembly, that Proctor N. Carter and Herman Julien be designated and appointed by the board as the two "elected members" to serve on the board of trustees on the effective date of the act until January 1, 1975. This motion was recorded and carried. Subsequently, on December 31, 1972, Mr. Carter and Mr. Julien retired from state employment and on January 3, 1973, the appointments of Mr. Carter and Mr. Julien were sent by the former governor to the Senate for confirmation and returned by the Senate on January 9, 1973.

Lastly, it is our understanding that Mr. Carter and Mr. Julien claim they are presently attending meetings of the board of trustees and serving in the alleged capacity of the "employee positions" on the board of trustees based on their alleged appointment by the board of trustees.

It is our belief that this opinion request may be answered by considering the second question in regard to who has the authority to make the appointments. In this connection, it is our view that the answer to this question depends on the meaning of the language:

> "The two elected members' terms shall be served by members on the board at the effective date of this act."

The basic rule of statutory construction is to seek legislative intention, which should be ascertained from the words used, if that is possible, and, in so doing, the words should be given their plain and ordinary meaning, so as to promote the object and manifest purpose of the statute. State ex rel. State Highway Commission v. Wiggins, 454 S.W.2d 899 (Mo. banc 1970). Under such circumstances, a court must, if possible, give effect to the whole and every part of the statute, including every word, clause and sentence and to avoid unjust, absurd or unreasonable results. Stewart v. Johnson, 398 S.W.2d 850 (Mo. 1966) and State ex rel. Stern Brothers & Co. v. Stilley, 337 S.W.2d 934 (Mo. 1960).

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With the foregoing principles in mind, it should be noted that prior to August 13, 1972, the effective date of Senate Bill No. 548, 76th General Assembly, the board of trustees consisted of seven members, four of them ex officio, the State Treasurer, the State Comptroller, the Director of the Personnel Division, and the Superintendent of Insurance, and three members appointed by the Governor. As of August 13, 1972, Senate Bill No. 548 provided for three ex officio members, the State Treasurer, the State Comptroller, the Director of the Personnel Division, a member of the Senate appointed by the President Pro-Tem of the Senate, a member of the House of Representatives appointed by the Speaker of the House, two members of the system appointed by the Governor for four-year terms during the Governor's term of office, and two members elected by members of the system for four years to commence January 1, 1975.

As a result, it is our view that the phrase "members on the board at the effective date of this act" refers not to individuals but to offices. In this regard, the two offices provided for on the old board, but omitted on the new board, are the Superintendent of Insurance and one appointed by the Governor. Therefore, it is our opinion that during the interval until January 1, 1975, the two elected members' terms should be served by persons now or in the future holding offices whose occupants were members of the retirement board on the effective date of Senate Bill No. 548, that is, the Superintendent of Insurance and one person appointed by the Governor. This position is further supported by the language which was found in the old statute and which was repeated in Senate Bill No. 548:

>". . . Any vacancies occurring in the office
>of trustees shall be filled in the same man-
>ner as the office was filled previously."
>(Emphasis added)

Thus, it is logical to conclude that the legislature intended that during the interval until January 1, 1975, any vacancy in the employee offices on the board would be filled in the same manner as the office was filled previously which would necessarily include the hold-over offices of the Superintendent of Insurance and one appointment by the Governor. This interpretation is also consistent with a common custom in this country to make certain state officers ex officio members of state boards created for various purposes by statutory enactment. 63 Am.Jur.2d, Public Officers, Section 24, page 641. Lastly, it should be noted that any other interpretation is an unreasonable or absurd result. For example, if it be argued that the legislature intended that the two employee positions on the board are vacant until January 1, 1975, such interpretation is unreasonable for the reason that courts indulge in a strong presumption against a legislative intent to create a condition that might result in a vacancy in a public office. State ex

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inf. Lamkin ex rel. Harrison v. Tennyson, 151 S.W.2d 1090 (Mo. banc 1941). On the other hand, if it be argued that the legislature intended that the two employee offices on the board would be filled by former individuals on the board, such interpretation raises serious constitutional questions concerning the power of appointment, and we will not presume that the legislature intended such a result. See City of Kirkwood v. Allen, 399 S.W.2d 30 (Mo. banc 1966) and State ex inf. Hadley v. Washburn, 67 S.W. 592, 596 (Mo. banc 1902).

In view of the answer to the second question, it is obvious that the answer to the first question is "no" because the statute itself provides for the persons who are to serve ex officio and by appointment until 1975.

CONCLUSION

It is the opinion of this office that during the interval until January 1, 1975, the two elected members' terms on the board of trustees of the Missouri State Employees' Retirement System shall be served by the Superintendent of Insurance and one appointment to be made by the Governor.

Yours very truly,

JOHN C. DANFORTH
Attorney General