

RETIREMENT:
COUNTY HEALTH CENTERS:
STATE EMPLOYEES' RETIREMENT SYSTEM:

Employees of county health centers established under the provisions of Chapter 205, RSMo, are not eligible for membership in the Missouri State Employees' Retirement System.

OPINION NO. 32

December 18, 1974

Honorable R. L. "Scoop" Usher
Representative, District 12
& House Post Office
State Capitol Building
Jefferson City, Missouri 65101



Dear Representative Usher:

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

"Are employees of County Health Centers established under Chapter 205; State employees under Section 104.310 R.S.Mo 1969, and thus covered by the Missouri State Employees Retirement System?"

In connection with the above, in the case of Hawkins v. Missouri State Employees' Retirement System, 487 S.W.2d 580 (Mo.Ct. App. at K.C. 1972), the issue was whether or not a circuit court reporter was entitled to membership and prior membership credit in the Retirement System. In this regard, Section 485.060, RSMo 1969, provides that a court reporter shall receive an annual salary of twelve thousand dollars and Section 485.065, RSMo 1969, provides of that salary six thousand five hundred dollars is to be paid out of the state treasury. In reaching its decision, the court determined whether or not an individual court reporter came within the definitions of "employee" and "department" as those terms are defined in subsections (11) and (15) of Section 104.310, RSMo 1969.

"(11) 'Department', any department, institution, board, commission, officer, court or any agency of the state government receiving state appropriations including allocated funds from the federal government

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and having power to certify payrolls authorizing payments of salary or wages against appropriations made by the federal government or the state legislature from any state fund, or against trusts or allocated funds held by the state treasurer;

* * *

"(15) 'Employee', any elective or appointive officer or employee of the state who is employed by a department and earns a salary or wage in a position normally requiring the actual performance by him of duties during not less than one thousand five hundred hours per year, including each member of the general assembly, but not including any employee who is covered under some other retirement or benefit fund to which the state is a contributor; except this definition shall not exclude any employee as defined herein who is covered only under the Federal Old Age and Survivors' Insurance Act, as amended. As used in sections 104.310 to 104.550, the term 'employee' shall include civilian employees of the Army National Guard or Air National Guard of this state who are employed pursuant to section 709 of title 32 of the United States Code and paid from federal appropriated funds;"

The Kansas City Court of Appeals concluded that a court reporter was entitled to membership and prior membership credit in the Missouri State Employees' Retirement System. The reasoning of the court was that a court reporter was an "employee" of the state as defined in subsection (15) of Section 104.310, RSMo 1969, and was employed by a "department" which receives state appropriations as defined in subsection (11) of Section 104.310, RSMo 1969.

In regard to employees of county health centers, Section 205.010, RSMo 1969, provides that any county, subject to the provisions of the Missouri Constitution, may, under certain conditions, establish, maintain, manage, and operate a public health center. Section 205.100, RSMo 1969, indicates that the county court shall appoint the director of the public health center as county health officer and such county health officer shall exercise all of the rights and perform all of the duties pertaining to that office as

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set forth under the health laws of the state and rules and regulations of the Division of Health. In addition, Section 205.110, RSMo 1969, reads as follows:

"The qualifications of all persons employed in the operation of said health center shall be at least equal to the minimum standard of qualifications as set forward by the division of health or its successors for positions of like importance and responsibilities."

In regard to the payment of salaries of employees of county health centers, we have been informed by the deputy director of the Division of Health as follows:

"You are correct in that the employees are paid by the various counties and cities and in turn are reimbursed by the Division of Health on a formula ranging from 6.6% to 77% of personal services. The formula is based upon an inverse ratio of the assessed valuation of the counties. Section 205.042, Subsection 10, provides that counties can contract with state agencies and basically this refers to the State Division of Health.

"The appropriation under which we reimburse counties is set forth in House Bill No. 1006, for the period beginning July 1, 1974 and ending June 30, 1975. Section 6.060, of the above bill states, 'To the Department of Social Services for the Division of Health for financial assistance to local health agencies including cities, counties, and regions for personal service expenditures in the operation of local agencies, from General Revenue..... \$1,392,000.'

"In addition to the above General Revenue funds, we expend approximately \$700,000 of Federal Funds for the same purpose."

As a result of the above, it is our view that the situation of employees of county health centers is essentially different from that of court reporters. The reason being that such employees are in fact employed by the various counties, performing services for the counties and are paid by the various counties and cities who in turn are only reimbursed by the Division of Health

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on a formula ranging from 6.6% to 77% of personal services. We therefore conclude that employees of county health centers as provided for in Chapter 205, RSMo 1969, are not eligible for participation in the Missouri State Employees' Retirement System for the reason that they are not an "employee" of the state as defined in subsection (15) of Section 104.310, RSMo 1969, and are not employed by a "department" which receives state appropriations as defined in subsection (11) of Section 104.310, RSMo 1969.

CONCLUSION

It is the opinion of this office that employees of county health centers established under the provisions of Chapter 205, RSMo, are not eligible for membership in the Missouri State Employees' Retirement System.

The foregoing opinion, which I hereby approve, was prepared by my assistant, B. J. Jones.

Yours very truly,



JOHN C. DANFORTH
Attorney General