



JOHN C. DANFORTH
ATTORNEY GENERAL

OFFICES OF THE
ATTORNEY GENERAL OF MISSOURI
JEFFERSON CITY

May 3, 1974

OPINION LETTER NO. 57

Mr. Edwin M. Bode, Secretary
Missouri State Employees'
Retirement System
Post Office Box 209
Jefferson City, Missouri 65101

Dear Mr. Bode:

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

"Whether an employee of the State of Missouri is entitled to prior service credit from September 1, 1933 to July 1, 1942 while working as a civilian employee supervising activities of Civilian Conservation Corps Camp enrollees."

The employee in question has provided the following background information:

"On September 1, 1933, I reported to a Civilian Conservation Corps Camp in Indian Trails State Park. I was assigned as a member of supervisory personnel directing work activities of CCC enrollees. This work was being done on lands of the old Fish and Game Department.

"I continued in this assignment at this location, at Deer Run State Park and Refuge and Meramec State Park until July 1, 1942, at which time I was assigned the position of Construction Assistant with the Forestry Division of the Department of Conservation. The entire

Mr. Edwin M. Bode

period from 1933 to 1942 was spent as a civilian employee supervising activities of CCC enrollees doing work on lands owned by the Fish and Game Department or its successor, the Department of Conservation.

"Payment for this service was by federal check. However, work plans were developed and all work was supervised by the Fish and Game Department or the Conservation Department. Payrolls were made up and certified for payment by personnel attached to these departments.

"When the State Employees Retirement System went into effect an employee submitted a record of their prior service, I was advised not to submit this service from 1933 to 1942. At that time I did not review the law and saw no reason to question these instructions."

The Missouri State Employees' Retirement System became effective August 29, 1957, under an act of the 69th General Assembly. See Laws of Missouri, 1957, pages 707-718 and 880. At this time, subsection 1 of Section 104.340, RSMo, provided as follows:

"Any member of the system on the first day of the first month following the effective date of this act, shall be given credit for prior service with the state. All such service must be established to the satisfaction of the board."

Thus, under the above statute any employee who became a member on September 1, 1957, was entitled to credit for all service rendered prior to that date any department, division, or agency to which the system was applicable. It is our understanding that the individual in question became a member of the retirement system on September 1, 1957.

The eligibility for membership in the Missouri State Employees' Retirement System is governed by the definitions of "department" and "employee" as set forth in subsections 11 and 15, respectively, Section 104.310, RSMo. These definitions read as follows:

"(11) 'Department', any department, institution, board, commission, officer, court

Mr. Edwin M. Bode

or any agency of the state government receiving state appropriations including allocated funds from the federal government 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 was 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 was 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 Conservation Corps was created by Executive Order No. 6101, April 5, 1933, by authority of an act of the 73rd Congress of the United States, March 31, 1933. Such act provided in full:

"AN ACT

For the relief of unemployment through the performance of useful public work, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That for the purpose of relieving the acute condition of

Mr. Edwin M. Bode

widespread distress and unemployment now existing in the United States, and in order to provide for the restoration of the country's depleted natural resources and the advancement of an orderly program of useful public works, the President is authorized, under such rules and regulations as he may prescribe and by utilizing such existing departments or agencies as he may designate, to provide for employing citizens of the United States who are unemployed, in the construction, maintenance and carrying on of works of a public nature in connection with the forestation of lands belonging to the United States or to the several States which are suitable for timber production, the prevention of forest fires, floods and soil erosion, plant pest and disease control, the construction, maintenance or repair of paths, trails and firelanes in the national parks and national forests, and such other work on the public domain, national and State, and Government reservations incidental to or necessary in connection with any projects of the character enumerated, as the President may determine to be desirable: Provided, That the President may in his discretion extend the provisions of this Act to lands owned by counties and municipalities and lands in private ownership, but only for the purpose of doing thereon such kinds of cooperative work as are now provided for by Acts of Congress in preventing and controlling forest fires and the attacks of forest tree pests and diseases and such work as is necessary in the public interest to control floods. The President is further authorized, by regulation, to provide for housing the persons so employed and for furnishing them with such subsistence, clothing, medical attendance and hospitalization, and cash allowance, as may be necessary, during the period they are so employed, and, in his discretion, to provide for the transportation of such persons to and from the places of employment. That in employing citizens for the purposes of this Act no discrimination shall be made on account of race, color, or creed; and no person under conviction for crime and serving sentence therefor shall be employed under

Mr. Edwin M. Bode

the provisions of this Act. The President is further authorized to allocate funds available for the purposes of this Act, for forest research, including forest products investigations, by the Forest Products Laboratory.

"Sec. 2. For the purpose of carrying out the provisions of this Act the President is authorized to enter into such contracts or agreements with States as may be necessary, including provisions for utilization of existing State administrative agencies, and the President, or the head of any department or agency authorized by him to construct any project or to carry on any such public works, shall be authorized to acquire real property by purchase, donation, condemnation, or otherwise, but the provisions of section 355 of the Revised Statutes shall not apply to any property so acquired.

"Sec. 3. Insofar as applicable, the benefits of the Act entitled 'An Act to provide compensation for employees of the United States suffering injuries while in the performance of their duties, and for other purposes', approved September 7, 1916, as amended, shall extend to persons given employment under the provisions of this Act.

"Sec. 4. For the purpose of carrying out the provisions of this Act, there is hereby authorized to be expended, under the direction of the President, out of any unobligated moneys heretofore appropriated for public works (except for projects on which actual construction has been commenced or may be commenced within ninety days, and except maintenance funds for river and harbor improvements already allocated), such sums as may be necessary; and an amount equal to the amount so expended is hereby authorized to be appropriated for the same purposes for which such moneys were originally appropriated.

"Sec. 5. That the unexpended and unallotted balance of the sum of \$300,000,000 made available under the terms and conditions of

Mr. Edwin M. Bode

the Act approved July 21, 1932, entitled 'An Act to relieve destitution', and so forth, may be available, or any portion thereof, to any State or Territory or States or Territories without regard to the limitation of 15 per centum or other limitations as to per centum.

"Sec. 6. The authority of the President under this Act shall continue for the period of two years next after the date of the passage hereof and no longer."

Section 3 of the above was repealed by the same Congress in 1934, as follows:

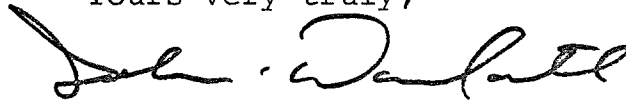
"Section 3 of the Act entitled 'An Act for the relief of unemployment through the performance of useful public work, and for other purposes', approved March 31, 1933 (48 Stat. 22), is hereby repealed, insofar as said Act applies to enrollees in the Civilian Conservation Corps, and in lieu thereof the provisions of the Act entitled 'An Act to provide compensation for employees of the United States suffering injuries while in the performance of their duties, and for other purposes', approved September 7, 1916, as amended (U.S.C., title 5, ch. 15), are hereby made applicable to such enrollees under the said Act of March 31, 1933, to the same extent and under the same conditions as is provided for employees of the Federal Civil Works Administration in the Act entitled 'An Act making an additional appropriation to carry out the purposes of the Federal Emergency Relief Act of 1933, for continuation of the Civil Works program, and for other purposes', approved February 15, 1934 (Public, Numbered 93, Seventy-third Congress): Provided, That so much of the sum appropriated in the first paragraph of title II of this Act as the United States Employees' Compensation Commission, with the approval of the Director of the Budget, estimates and certifies to the Secretary of the Treasury will be necessary for administrative expenses and for the payment of such compensation shall be set aside in a special fund to be administered by the Commission for such purposes; and after June 30, 1935, such

Mr. Edwin M. Bode

special funds shall be available for these purposes annually in such amounts as may be specified therefor in the annual appropriation Acts."

It is our view that such acts indicate that employees of the Civilian Conservation Corps were employees of the United States government and not of the state of Missouri, within the retirement act, and that past service credit cannot be allowed for service with the Civilian Conservation Corps.

Yours very truly,

A handwritten signature in cursive script, appearing to read "John C. Danforth".

JOHN C. DANFORTH
Attorney General