



OFFICES OF THE

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY

May 6, 1974

JOHN C. DANFORTH
ATTORNEY GENERAL

OPINION LETTER NO. 82

Honorable Don Hancock
State Representative, District 153
906 Lafayette
Doniphan, Missouri 63935

Dear Representative Hancock:

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

"May a teacher be reinstated under the Teacher and School Retirement Systems when said teacher retired at age 58 (with 40 years service) in 1966 and reentered the ranks of active teachers in 1972? This teacher is willing and able to reimburse the fund for all retirement heretofore withdrawn. . . ."

It is our understanding that the individual in question retired in 1966 from the Public School Retirement System of Missouri with forty-two years of service. At that time, she was fifty-eight years of age and then worked six years for the Division of Employment Security for the state of Missouri. Subsequently, she returned to teaching in 1972 at a much greater salary. Therefore, the individual in question would like to pay back to the Public School Retirement System of Missouri all benefits that she received between 1966 and 1972 and therefore be credited with the prior forty-two years of teaching service as well as five additional years of teaching service that she plans on obtaining in order that her retirement benefits will be calculated on the "final average salary" of her last five years of teaching service.

In connection with the above, subsection 3 of Section 169.050, RSMo, provides in part as follows:

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"3. No prior service credit shall be granted to any person who becomes a member after the first year of the system's operation, except as provided in subsection 5 of this section and subsection 2 of section 169.055 unless that person's failure to become a member before or during that year was due either to service in the armed forces of the United States or to attendance at a recognized educational institution for professional improvement; provided, that the board of trustees may grant prior service credit to a teacher who taught prior to August 1, 1945, if the teacher returns to teaching before July 1, 1950, and if such teacher teaches in the public schools of Missouri not less than seven years after returning before retirement, or the board of trustees may grant prior service credit to a teacher who taught prior to August 1, 1945, if the teacher returns to teaching and teaches at least one-half of the number of years between July 1, 1946, and age sixty-five but not less than seven years after returning before retirement, except that a member who will have thirty-five or more years of teaching service in Missouri at retirement shall be required to teach not less than three years after returning and before retirement.
. . ."

Also, subsection 4 of Section 169.050, RSMo, provides as follows:

"4. Membership shall be terminated by failure of a member to be a public school employee under this system for more than four of any five consecutive years, by death, withdrawal of contributions, or retirement based on either age or disability."

Lastly, subsection 5 of Section 169.050, RSMo, provides in part as follows:

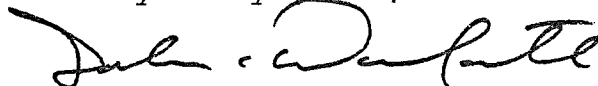
"5. If a member withdraws or is refunded his contributions, he shall thereby forfeit any creditable service he may have; provided, however, if such person again becomes a member of the system, he may elect within five years after such reemployment, or before

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July 1, 1968, and prior to retirement, whichever is later, to reinstate any creditable service forfeited at time of withdrawal or refund. The reinstatement shall be effected by the member's paying to the retirement system with interest the amount of accumulated contributions withdrawn by him or refunded to him at the time of withdrawal or refund and by teaching in the public schools of Missouri not less than seven years after returning before retirement; provided, however, that reinstatement with respect to eligibility for disability retirement shall be effective after returning and teaching not less than three years in the public schools of Missouri if such teaching makes a total of at least eight years taught in the public schools of Missouri. . . ."

As a result of the above statutory provisions, it is our view that the provisions of subsection 3 of Section 169.050, RSMo, providing for the reinstatement of prior service credit by certain individuals under certain circumstances; and also subsection 5 of Section 169.050, RSMo, providing for reinstatement of credit after a withdrawal of contributions and with respect to eligibility for disability retirement, are not applicable. The reason being that the individual in question elected to retire in 1966 and she ceased to be a member of the Retirement System under the provisions of subsection 4 of Section 169.050, RSMo. In this regard, it is our view that any contention that her retirement was not based on age is untenable, as subsection 2 of Section 169.060, RSMo provides that any member whose creditable service is thirty years or more and whose age is less than sixty, may retire at a reduced benefit upon written application to the board of trustees. Under such circumstances, upon returning to teaching in 1972, it is our view that she became a "new member" and therefore it is our opinion that her annuity would be calculated on the basis of the annuity that she had previously received, and another annuity that she will be eligible to receive after returning to teaching in 1972 if she teaches for the minimum period necessary to become eligible for such annuity.

Very truly yours,



JOHN C. DANFORTH
Attorney General