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OFFICES OF THE  
ATTORNEY GENERAL OF MISSOURI  
JEFFERSON CITY

June 26, 1974

OPINION LETTER NO. 171

Honorable Frank Bild  
State Senator, District 15  
7 Meppen Court  
St. Louis, Missouri 63128

Dear Senator Bild:

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

"Are persons under Sec. 169.580 RSMo. 1969 employees of the State of Missouri?"

"If so, should deductions be made for the state pension plan, social security, and withholding tax from the salaries paid under Sec. 169.580 RSMo. 1969?"

Section 169.580, RSMo 1969, provides as follows:

"Any person who served as a teacher in the public schools of this state and who retired prior to July 1, 1957, under the provisions of chapter 169, shall upon application to the state department of education be employed by the department as a special advisor and supervisor in connection with state educational problems. Any person so employed shall perform such duties as the commissioner of education directs and shall receive a salary of seventy-five dollars per month, payable out of the general revenue of the state pursuant to appropriations for the purpose, except that the payment to the retired person for such services, together with the retirement benefits he receives under chapter 169,

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shall not exceed one hundred fifty dollars per month. The employment provided for by this section shall in no way affect any person's eligibility for retirement benefits under chapter 169."

In connection with the above, the assumption is made that the "state pension plan" that you are referring to is the Missouri State Employees' Retirement System as provided for in Sections 104.310 through 104.450, RSMo, since the employees in question are paid out of general revenue.

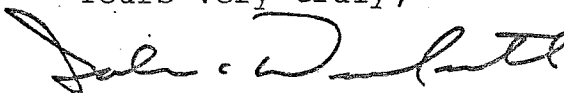
We have communicated with the Department of Education of the state of Missouri, and we are informed that such retired teachers do not actually perform services for the state. Section 104.310 (15), RSMo 1973 Supp., provides in part as follows:

"'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, . . ."

In view of the fact that these retired teachers are not earning a salary or wage in a position normally requiring the actual performance of duties during not less than one thousand five hundred hours per year, it is clear that they do not come within the definition of "employee." Therefore, it is clear that the retired teacher is not eligible for membership in the Missouri State Employees' Retirement System.

We are enclosing a copy of a letter dated June 10, 1974, from William J. Wasson, Deputy Commissioner of the Department of Education, giving the reason that the Department of Education is not at the present time withholding federal income tax from the payments for these retired teachers. We are also enclosing a copy of the determination made by C. D. Johnson of the Kansas City Payment Center under date of November 3, 1966, which holds that teachers are not employees of the Missouri State Department of Education and the payments are exempted from wages under the Social Security Act.

Yours very truly,



JOHN C. DANFORTH  
Attorney General

Enclosures