



OFFICES OF THE

ATTORNEY GENERAL OF MISSOURI

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JOHN C. DANFORTH
ATTORNEY GENERAL

OPINION LETTER NO. 73

Mr. William J. Raftery, Director
Division of Accounting
Office of Administration
Room 121, Capitol Building
Jefferson City, Missouri 65101

Dear Mr. Raftery:

This letter is in response to your question asking:

"If a judge retires from service under the disability retirement provision, must the judge continue his contribution of 5% of salary to maintain his eligibility for regular retirement under the retirement provisions of 476.515 to 476.570 RSMo 1973 Supplement."

You also state that:

"Judge John C. Casey, retired judge of the 22nd Judicial Circuit, receives 50% of his past salary as disability retirement benefits. To protect his rights and possibly his wife's rights to receive regular retirement following the end of his originally-appointed term at December 31, 1976, Judge Casey has continued payment of 5% of his disability retirement benefits for retirement purposes. He has asked us to determine if he needs to continue paying the 5% of his disability retirement benefits to remain eligible for regular retirement benefits."

Sections 476.515 to 476.570, RSMo Supp. 1973, relate to the retirement of judges. Judges are defined in Section 476.515(4) as:

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". . . any person who has served or is serving as a judge or commissioner of the supreme court or of the court of appeals, or as a judge of any circuit court, probate court, magistrate court, court of common pleas or court of criminal corrections of this state or as a justice of the peace;"

Salary is defined in Section 476.515(5) as:

". . . the total compensation paid for personal services as a judge by the state or any of its political subdivision."

Section 27, Article V, Constitution of Missouri, provides in part that:

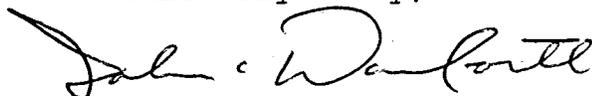
". . . Where a judge or magistrate, subject to retirement under other provisions of law, has been retired under the provision of this section [Section 27], the time during which he was retired for disability under this section shall count as time served for purposes of retirement under other provisions of law."

However, a judge who has been retired under Section 27 is no longer a judge of any court. State on inf. Dalton v. Russell, 281 S.W.2d 781 (Mo.Banc 1955).

Although the definition of "judge" in Section 476.515 is broad enough to include a judge retired under Section 27 and although the time during which an eligible judge is retired under Section 27 expressly counts as time served in computing retirement benefits under Sections 476.515 et seq., it is our view that a judge receiving retirement benefits under Section 27 is not receiving a "salary" as defined in Section 476.515 and therefore is not required to make the contribution required under Section 476.525.

Therefore, the retirement contribution should not be collected from judges retired under Section 27.

Yours very truly,



JOHN C. DANFORTH
Attorney General