



OFFICES OF THE

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY

JOHN C. DANFORTH  
ATTORNEY GENERAL

August 20, 1976

OPINION LETTER NO. 17

Mr. J. Neil Nielsen, Commissioner  
Office of Administration  
State Capitol Building  
Jefferson City, Missouri 65101

Dear Mr. Nielsen:

This is in reply to your request for an opinion on the following question:

Section 33.103, RSMo Supp. 1975, provides that the Commissioner of Administration may deduct from an employee's compensation warrants for participation in a voluntary retirement plan. Such deductions are currently made for tax-sheltered annuity program participants employed by the Departments of Higher Education, Elementary and Secondary Education, and Mental Health. The total amount deducted is then paid to the authorized agent who pays the various vendors of the annuity contract which have been chosen by the individual employees. Does S.C.S.H.C.S. House Bill No. 1112, Second Regular Session, 77th General Assembly, require a competitive bidding process for selection of one vendor of these tax-sheltered annuity contracts authorized by Section 33.103?

Section 33.103, RSMo Supp. 1975, reads in part as follows:

"1. Whenever the employees of any state department, division or agency establish any voluntary retirement plan, or participate in any group hospital service plan, group life insurance plan, medical service plan or other such plan, the commissioner

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of administration may deduct from such employees' compensation warrants the amount necessary for each employee's participation in the plan. Before such deductions are made, the person in charge of the department, division or agency, shall file with the commissioner of administration an authorization showing the names of participating employees, the amount to be deducted from each such employee's compensation, and the agent authorized to receive the deducted amounts. The amount deducted shall be paid to the authorized agent in the amount of the total deductions by a warrant issued as provided by law."

Because tax-sheltered annuity plans are one type of "voluntary retirement plan," deductions may be made from employees' compensation warrants, and the amounts so deducted paid to the "authorized agent," if the department, division, or agency has filed with the Commissioner the name of the authorized agent, the names of the participating employees, and the amounts to be deducted.

The primary rule of statutory construction is to determine and to give effect to the intent of the legislature, as determined from the plain and ordinary meaning of the words used. State ex rel. Dravo Corporation v. Spradling, 515 S.W.2d 512 (Mo. 1974). Since the language used in Section 33.103 is plain and unambiguous, statutory construction is unnecessary. United Airlines, Inc. v. State Tax Commission, 377 S.W.2d 444 (Mo. Banc 1964). We find no requirement in Section 33.103 for competitive bidding.

Section 105.915(2), RSMo Supp. 1975, provides that annuities offered pursuant to the Missouri deferred compensation plan shall be selected by a competitive bidding process. Since competitive bidding is required only for selection of annuities to be offered pursuant to the Missouri deferred compensation plan, the competitive bidding requirement does not apply to voluntary retirement plans instituted pursuant to Section 33.103. The deferred compensation statute, Sections 105.900-105.925, does not directly repeal Section 33.103. Repeals by implication are not favored in the law. Kansas City Terminal Railway Company v. Industrial Commission, 396 S.W.2d 678 (Mo. 1965).

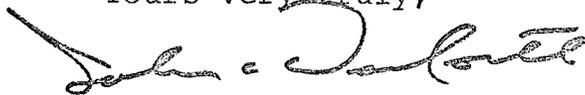
Our opinion that Section 105.915(2) does not require a competitive bidding process for selection of one vendor of tax-sheltered annuity contracts purchased pursuant to a Section 33.103 voluntary retirement plan is further supported by the fact that the vested contract rights of certain voluntary retirement plan participants

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could be adversely affected by requiring those participants to terminate their current annuity contracts and to purchase new annuity contracts from one vendor.

Therefore, it is our view that Section 105.915(2) does not require a competitive bidding process for selection of one vendor of tax-sheltered annuity contracts purchased pursuant to a voluntary retirement plan authorized by Section 33.103.

Yours very truly,

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

JOHN C. DANFORTH  
Attorney General