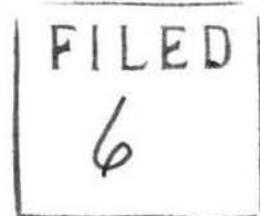


STATE EMPLOYEES: An employee of the state of Missouri
HIGHWAY PATROL: who was employed by the Missouri State
RETIREMENT: Highway Patrol from January 19, 1946
PENSIONS: until February 24, 1946, and who then
resigned to reenlist in the United
States Army, and who subsequently served continuously in the
United States Army until May of 1965, and who went to work for
the state of Missouri in August of 1965, and has continuously
been employed by the state since that time, is not entitled to
receive prior state or military service credit with the Missouri
State Employees' Retirement System from January, 1946 until
August, 1965.

OPINION NO. 6

March 17, 1977

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



Dear Mr. Bode:

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

"Advice is requested as to whether or not an employee of the State of Missouri, who was employed by the Missouri State Highway Patrol from January 19, 1946 until February 24, 1946, and who then resigned to re-enlist in the United States Army, and who subsequently served continuously in the United States Army until May of 1965, and who then went to work for the state in August of 1965 is entitled to receive prior service credit with the Missouri State Employees' Retirement System from January 1946 until August of 1965."

In your opinion request, it is also indicated that the employee in question resigned from the Highway Patrol in February, 1946, as he was drafted into the military service. We further understand that thereafter the employee served in the

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military from February 22, 1946 to June, 1965, due to his continuous reenlistment. We also understand that in August, 1965, the employee was employed by the state and has been so employed continuously since that time.

The legislation pertinent to this matter, Sections 104.340.1 and 104.340.2, RSMo Supp. 1975, provides as follows:

"1. Any member of the system, on the first day of the first month following the effective date of sections 104.310 to 104.550, shall be given credit for prior service with the state. All such service must be established to the satisfaction of the board.

"2. Any member, on the first day of the first month following the effective date of sections 104.310 to 104.550, shall be entitled to creditable prior service within the meaning of sections 104.310 to 104.550 for all active military service performed in the United States Army, Air Force, Navy, Marine Corps, Coast Guard and members of the United State Public Health Service when in the active military service, or any women's auxiliary thereof in time of active armed warfare, if such member was a state employee immediately prior to his entry into the armed services and became an employee of the state within ninety days after termination of such service under honorable conditions or release to inactive status in a reserve component of the armed forces. This includes (1) members of the reserve component of the armed forces (National Guard of the United States, United States Army Reserve, Air National Guard of the United States, United States Air Force Reserve, United States Naval Reserve, United States Marine Corps Reserve, United States Coast Guard), (2) reserve components existing prior and subsequent to the date of sections 104.310 to 104.550 and (3) the Reserve of United States Public Health Service, while in the active military service of the United States."

We believe that Attorney General Opinion No. 305, rendered December 13, 1972, a copy of which we enclose, is controlling in

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this matter, both on the issue of whether the employee in question is entitled, pursuant to Section 104.340.1, to credit for prior state service from January 19, 1946 until February 24, 1946, and on the issue whether he was entitled to credit for prior military service, pursuant to Section 104.340.2 for his service in the military from February, 1946 to June, 1965. In that opinion, it was held that an employee of the state of Missouri who terminated such employment on July 31, 1957, then returned to employment by the state on January 13, 1969, and who had since continuously remained in such employment, was not entitled to service credit for his state employment prior to July 31, 1957, as the individual was neither employed by the state nor a member of the Missouri State Employees' Retirement System on September 1, 1957. The opinion noted that although the original Section 104.340 had been enacted in 1957, repealed and reenacted in 1959, and repealed and reenacted in 1972 as the current effective Section 104.340, RSMo Supp. 1975, a person had to be a member of the Missouri State Employees' Retirement System on September 1, 1957, to receive credit for prior service with the state.

Thus, the employee in question in this matter could not receive credit for his prior state service from January 19, 1946 until February 24, 1946, as he was neither employed by the state nor a member of the State Employees' Retirement System on September 1, 1957. Further, the employee in question in this matter is not entitled to receive credit for his prior military service from February, 1946 to June, 1965, as again, the individual in question was not a member of the Missouri State Employees' Retirement System on September 1, 1957. The analysis provided in Attorney General Opinion No. 305 as to Section 104.340.1 is equally applicable to Section 104.340.2, and therefore the controlling date for determining an employee's entitlement to prior military service credit is September 1, 1957.

CONCLUSION

It is therefore the opinion of this office that an employee of the state of Missouri who was employed by the Missouri State Highway Patrol from January 19, 1946 until February 24, 1946, and who then resigned to reenlist in the United States Army, and who subsequently served continuously in the United States Army until May of 1965, and who went to work for the state of Missouri in August of 1965, and has continuously been employed by the state since that time, is not entitled to receive prior state or military service credit with the Missouri State Employees' Retirement System from January, 1946 until August, 1965.

Mr. Edwin M. Bode

The foregoing opinion, which I hereby approve, was prepared by my assistant, Greg Hoffmann.

Very truly yours,

A handwritten signature in cursive script that reads "John Ashcroft".

JOHN ASHCROFT
Attorney General

Enclosure: Op. No. 305
12/13/72, Bode