PUBLIC SCHOOL RETIREMENT SYSTEM: The Public School Retire-
SICK LEAVE PAYMENTS AND SICK LEAVE: ment System of Missouri
RETIRED STATE EMPLOYEES: is required under Section
                                     104.601, RSMo Supp. 1982,
to allow creditable service for unused sick leave in calculating
retirement benefits for those members employed by agencies of the
State of Missouri other than institutions of higher learning, but
the provisions of that section do not apply to those members who
are not employed by a state agency. In calculating the retire-
ment benefits for such members, The Public School Retirement Sys-
tem of Missouri is required under Section 104.601 to include any
creditable service for unused accumulated sick leave in addition
to the creditable service for actual services, and the allowance
of such unused sick leave credit may not be deferred to the
period following the date of last services.

                        December 30, 1982

                                            OPINION NO. 82

David W. Mustoe
Executive Secretary
Public School Retirement System of Missouri
Post Office Box 268
Jefferson City, Missouri 65102

Dear Dr. Mustoe:

        This is in response to your request for an official opinion
from this office, which request reads as follows:

        1. Can The Public School Retirement System of Missouri
        allow creditable service for unused sick leave only to
        those members who are state employees?

        2. If the answer to 1. is "yes", must The Public
        School Retirement System of Missouri use the additional
        creditable service in calculating the retirement bene-
        fits of its members who are state employees?

        3. If the unused sick leave is used in the calculation
        of benefits, can the credit be included within the same
        period for which a member receives a year of creditable
        service for actual services?

        4. If the unused sick leave credit is extended into
        the period following the date of last services, can re-
        tirement be made effective during that period and bene-
        fits paid for the period?

David W. Mustoe

Your questions are answered by the provisions of Section 104.601, RSMo Supp. 1982, which was enacted by House Committee Substitute for House Bills Nos. 1720, 1645 and 1276, 81st General Assembly, Second Regular Session, and became effective on June 1, 1982. Section 104.601 provides as follows:

> Any member retiring under the provisions of chapter 104 or any member retiring under the provisions of chapter 169, RSMo, who is a member of the public school retirement system and who is employed by a state agency other than an institution of higher learning, after working continuously until reaching retirement age shall be credited with all his unused sick leave as certified by his employing agency. When calculating years of service, each member shall be entitled to one-twelfth of a year of creditable service for each eighty-four days of unused accumulated sick leave earned by him. The rate of accrual of sick leave for purposes of computing years of service as this act applies to legislative, executive and judicial employees shall be consistent with the rate of accrual as specified by regulations of the personnel advisory board pursuant to section 36.350, RSMo. Nothing under this section shall allow a member to vest in the retirement system by using such credited sick leave to reach the time of vesting.

When statutes are plain and unambiguous, there is no room for construction and they must be applied by the courts as they are written by the legislature. United Airlines, Inc., v. State Tax Commission, 377 S.W.2d 444, 448 (Mo. banc 1964). The word "shall" within a statute indicates a mandate and will usually be interpreted to command the doing of whatever is required. Howard v. Banks, 544 S.W.2d 601, 604 (Mo. App. 1976). Therefore, in response to your first and second questions, it is our view that The Public School Retirement System of Missouri is required under Section 104.601 to allow creditable service for unused sick leave in calculating retirement benefits for those members employed by agencies of the State of Missouri other than institutions of higher learning, and that the provisions of Section 104.601 do not apply to those members who are not employed by a state agency.

In regard to your third and fourth questions, the provisions of Section 104.601 clearly and unambiguously provide that when calculating years of service, each member shall be entitled to one-twelfth of a year of creditable service for each eighty-four days of unused accumulated sick leave earned by him. We find
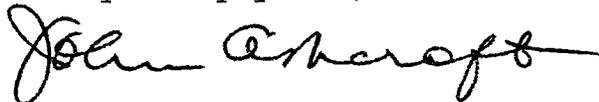
David W. Mustoe

nothing in this statute or in our review of Chapter 169, RSMo, relating to The Public School Retirement System of Missouri, which allows any unused sick leave credit to be extended into the period following the date of last services. Therefore, it is our view that in calculating the retirement benefits for such members, The Public School Retirement System of Missouri is required under Section 104.601 to include any creditable service for unused accumulated sick leave in addition to the creditable service for actual services, and that the allowance of such unused sick leave credit may not be deferred to the period following the date of last services.

<div align="center">CONCLUSION</div>

It is the opinion of this office that The Public School Retirement System of Missouri is required under Section 104.601, RSMo Supp. 1982, to allow creditable service for unused sick leave in calculating retirement benefits for those members employed by agencies of the State of Missouri other than institutions of higher learning, but the provisions of that section do not apply to those members who are not employed by a state agency. In calculating the retirement benefits for such members, The Public School Retirement System of Missouri is required under Section 104.601 to include any creditable service for unused accumulated sick leave in addition to the creditable service for actual services, and the allowance of such unused sick leave credit may not be deferred to the period following the date of last services.

The foregoing opinion, which I hereby approve, was prepared by my assistant, B. J. Jones.

Very truly yours,

JOHN ASHCROFT
Attorney General