

SCHOOLS:
PUBLIC SCHOOL RETIREMENT SYSTEM:

Teacher who continues to teach after attaining compulsory retirement age is entitled to receive retirement allowance upon separation from active teaching service.

August 18, 1952

Filed: 786

Mr. A. P. Stone, Jr.
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Dear Sir:

Your letter at hand requesting an opinion of this department in behalf of the Board of Regents of the Southwest Missouri State College which, in part reads:

"At its meeting on June 24, 1952, the Board of Regents of Southwest Missouri State College directed that I request, on behalf of the Board of Regents, that your office render an opinion upon the following question:

"If a teacher who has reached the age of mandatory retirement should continue to teach full-time or part-time in a district covered by the Retirement System, would such teaching service, together with remuneration received therefor, and the non-payment of contributions for such period of service, prevent the teacher from receiving, at the close of such period of service and upon cessation of remuneration therefor, benefits from the system at the same rate available upon attainment of the age of mandatory retirement?"

Under the provisions of Section 169.010 (1) (6), RSMo, 1949, the Public School Retirement System law as contained in Sections 169.010 through 169.130, RSMo, 1949, is made applicable to teachers employed by state colleges.

In considering the question you have presented we do not undertake to rule on the propriety or legality of a teacher who has reached the compulsory retirement age of seventy years continuing thereafter in the teaching service.

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In our opinion submitted to the Executive Secretary of the Public School Retirement System under date of May 29, 1951, we did conclude that a member of the Retirement System who has reached the compulsory retirement age of seventy years was automatically retired and would not be eligible to receive a retirement allowance during the period in which he may continue to teach, either on a full-time or a part-time basis, as we defined those terms in the opinion, after being retired. In short, a teacher who has reached the compulsory retirement age cannot continue to teach and at the same time receive a retirement allowance during the period he teaches.

However, you inquire if a teacher who has reached the compulsory age and continues teaching would be entitled to receive a retirement allowance after his extended teaching service was terminated.

As pointed out in the opinion referred to above, the Public School Retirement System was created for the purpose of providing a retirement allowance for public school teachers coming within the purview of the act. It is so provided in Section 169.020 (1), RSMo 1949. The funds for the operation of the Retirement System are derived from contributions made in equal amounts by the members and their employers. Section 169.030, RSMo 1949.

The retirement allowance as provided for by our Missouri Law is distinguishable from a pension with different rights attached thereto.

In the case of Retirement Board of Allegheny County v. McGovern, 316 Pa. 161, 174 A. 400, the Supreme Court of Pennsylvania was considering a county employee's retirement law. In distinguishing between retirement pay and pension the Court said at Atlantic i.e. 404, 405:

"Pensions should not be confused with retired pay. A pension is a bounty or a gratuity given for services that were rendered in the past. This act provides for retirement pay. Retirement pay is defined as 'adjusted compensation' presently earned, which, with contributions from employees, is payable in the future. The compensation is earned in the present, payable in the future to an employee, provided he possesses the qualifications required by the act, and complies with the terms, conditions, and regulations imposed on the receipt of retirement pay.

"Until an employee has earned his retirement pay, or until the time arrives when he may retire, his retirement pay is but an inchoate right; but when the conditions are satisfied, at that time retirement pay becomes a vested right of which the person entitled thereto cannot be deprived; it has

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ripened into a full contractual obligation. * * *

"The distinction between pension and retirement pay is not artificial. The government and municipalities are interested in the faithful and effective discharge of duty by public servants, and a fund judiciously administered is an effective way to secure service of the highest type. Where an allowance is made out of hand, gratuitously, and purely for past services, by the government, it is a pension, with all the attributes of a pension; but where the employee contributes a part of his salary or wages with a sum from the state or county under a quasi contractual relationship with the municipality or state, creating a contributed reserve retirement system, the results are different, retirement pay made therefrom is not a pension; the contributions by the government from their very nature must be viewed in a different light."

In State ex rel. Stringer v. Lee 147, Florida 37 to Southern (33) 127, the Supreme Court of Florida while determining the right to retirement pay under a law providing for the retirement of circuit judges, said at Southern l.c. 132, 133:

"The weight of authorities is to the effect that when a government by statute once establishes a compensation or retirement system for its said officers or employees and provides in part the funds and means for administering it according to the terms thereof, and any such officer or employee contributes money over a period of years and the contributions are placed to the credit thereof and the officer or employee has served the public or government for the designated period of years, or while serving attains a certain age or becomes mentally or physically disabled while so serving, and when the conditions arise or occur upon which by the rules and regulations of the system the said officers or employees become eligible for retirement and to receive funds to be paid out of said compensation retirement fund and the said officers or employees having met all the requirements of the act creating the retirement system, then the said officers or employees have acquired a vested right under the terms of said statute which establishes a contractual relation which may not be affected or adversely altered by subsequent enactments."

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In *Crawford v. Teachers' Retirement Association* 104 Ore. 77, 99 P. (2d) 729, the Supreme Court of Oregon in determining a teacher's rights to retirement benefits provided for under Oregon law creating a Public School Retirement System said at P. 1.c. 733:

"In our opinion, when, under the plan authorized by the statute, plaintiff voluntarily contributed a substantial part of her salary to this fund, contractual relations with the association were created. Prior to the time of her retirement and the completion of her payments, her rights in the fund were of an inchoate nature and were subject to any changes in the by-laws necessary for the betterment of the association. However, when there had been full performance on the part of the plaintiff, in compliance with the by-laws then governing the association, her rights became vested and no subsequent change in the by-laws could interfere with or impair such rights. Any other rule would utterly destroy all stability and security in the retirement fund plan under consideration."

For a complete discussion of the cases on this subject see the Annotation in 137 ALR 249, 255c.

On the basis of the above cases it would appear that teachers under our retirement system are entitled to receive their retirement allowance when all of the conditions of eligibility have been met, and when all requirements have been complied with they acquire a vested right in said allowance.

Therefore, in the situation which you have presented, if a teacher upon application for retirement allowance establishes certain creditable service, shows that all contributions have been paid, has attained the age of seventy years and has separated or withdrawn from active teaching service it is our thought that the qualifications for eligibility have been met; and that said teacher has a vested right to receive his retirement allowance as computed according to law.

In reading the statutes creating the Public School Retirement System of Missouri and providing for the payment of retirement allowances we find no provision in the law that would deny a teacher his retirement allowance who had reached the compulsory retirement age and had complied with the conditions of eligibility. Nor do we find any statutory provision requiring a teacher to apply for his retirement allowance at any certain time, once becoming eligible.

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Further, it would appear that the Legislature has clearly manifested an intent that a teacher is entitled to a retirement allowance for life during the period of retirement. Thus Section 169.010 (10) reads:

"'Retirement allowance' shall mean a monthly payment for life, during retirement."

CONCLUSION

It is therefore the opinion of this department that a teacher who has reached the age of mandatory retirement, and continues to teach either full-time or part-time would be entitled to receive his retirement allowance at the close of the period of extended teaching service and upon cessation of remuneration therefor at the rate available upon attainment of the age of mandatory retirement.

Respectfully submitted,

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APPROVED:

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