PUBLIC SCHOOL RETIREMENT SYSTEM:
CONSTITUTION:

) County contributions for Superintendent of Schools do not increase Superintendent's salary so as to contravene Art. VII, Sec. 13, Const. of Mo. 1945.

October 7, 1946

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Honorable Raymond H. Vogel
Assistant Prosecuting Attorney
Cape Girardeau County
Jackson, Missouri

Dear Sir:

We hereby acknowledge receipt of your request for an opinion, which reads as follows:

> "The Public School Retirement Act which became effective August 1, 1945, provides among other things that any County Superintendent of Schools, Assistant County Superintendent and those employed by the County Superintendent of Schools upon a full time basis are covered by the provisions of this act. The fund available for paying out retirement benefits is provided by payments from the salary of those covered by the act and by contributions from the employers of those persons. In the case of the County Superintendent of Schools the employer is the County.
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> "Article 7, Section 13 of the Missouri Constitution provides that the compensation of the state, county and municipal officers shall not be increased during the term of office. At the time the County Superintendent of Schools of Cape Girardeau County entered upon his term of office, a fixed salary was set. Inasmuch as the contribution made by the County enures to benefit the Superintendent of Schools the question has arisen whether the

> Public School Retirement Act insofar as it applies to the contribution by the county contravenes Article 7, Section 13 of the Constitution."

The determinative part of your request is that part which states:

> "Inasmuch as the contribution made by the County enures to benefit the Superintendent of Schools * * *"

In other words, it is your interpretation that that portion of the funds contributed to the Public School Retirement System by the county in behalf of the Superintendent of Schools, amounts to an increase of his compensation or salary during his term of office. In deciding whether or not such contribution amounts to an increase in compensation, it is necessary to discuss a few sections of House Bill 151, which is the Act establishing the Public School Retirement System.

Sub-section 1 of Section 3 thereof, provides:

> "The funds required for the operation of the retirement system created by this Act shall come from contributions made in equal amounts by members of the system and their employers, and from such interest as may be derived from the investment of any part of such contributions. All contributions shall be transmitted to the board of trustees by employers in such manner and at such times as the board by rule shall require."

Applying this section to the present situation, one-half of the total contribution is paid by the Superintendent of Schools and the other half by the county. That portion of the money paid in by the member, the Superintendent of Schools in this case, is to be individually accounted for by virtue of sub-section 17 of Section 2 of House Bill 151, which provides:

> "The board of trustees shall provide for the maintenance of an individual account with each member, setting forth such data as may be necessary for a ready determination of the <u>member's earnings</u>, <u>contributions</u>

> and interest accumulations. It shall also collect and keep in convenient form such data as shall be necessary for the preparation of the required mortality and service tables and for the compilation of such other information as shall be required for the valuation of the system's assets and liabilities." (Underscoring ours.)

The funds collected from the employer, or county in this case, are deposited with the custodian of the system along with the member's contribution, although the two funds are distinguishable at all times. Sub-section 1 of Section 4 of House Bill 151, provides:

> "All funds arising from the operation of this Act shall belong to the retirement system herein created and shall be controlled by the board of trustees of that system, which board shall provide for the collection of said funds, shall see that they are safely preserved, and shall permit their disbursement only for the purposes herein authorized. All funds when collected shall be deposited with the custodian. The said funds and all other funds received by the retirement system are declared and shall be deemed to be the monies and funds of the retirement system and not revenue collected or moneys received by the State and shall not be commingled with State funds." (Underscoring ours.)

The principal reason for maintaining individual accounts for members is to reimburse that amount to him in the event he should cease being a member of the system prior to retirement. In that respect Sub-sections 3, 4 and 5 of Section 7 of House Bill 151, provide:

> (3)"If the total of the retirement allowances paid to an individual before his death is less than his accumulated contributions at the time of his retirement, the difference shall be paid to his beneficiary or to his estate, if there be no beneficiary.

(4)"If a member dies before receiving a retirement allowance, his accumulated contributions at the time of his death shall be paid to his beneficiary or to his estate, if there be no beneficiary.

(5)"If a member ceases to be a public school employee as herein defined and certifies to the board of trustees that such cessation is permanent or if his membership is otherwise terminated, he shall be paid his accumulated contributions with interest, if he has contributed for more than five years. If he has contributed for not more than five years, he shall be paid the amount he has contributed, without interest."

You will note that only the amount contributed by the member, plus interest in some cases, is to be reimbursed to the member or his beneficiary, and in this event it cannot be said that the county's contributions enure to the benefit of the Superintendent of Schools prior to his retirement.

The money that is received by a member of the system after his retirement is termed as a "retirement allowance" and it is in the nature of a pension, which is distinguishable from the compensation which he received prior to retirement. In the absence of a determinative case in Missouri concerning the distinction between compensation and a pension, we turn to other jurisdictions, and quote from the case of Dickey v. Jackson, 181 Ia. 1155, 165 N. W. 387, l. c. 389, wherein it is stated:

"* * * The words 'pension' and 'compensation' are not synonymous * * * * * * The latter is ordinarily a gratuity from the government or some of its subordinate agencies, in recognition, but not in payment, for past services, though when provided as part of a scheme of employment it would seem to include some elements of a contractual character, and is doubtless intended to encourage faithfulness of service.* * *"

Concerning the term "pension," the case of City of Lincoln v. Steffensmeyer, 134 Neb. 613, 119 A.L.R. 914, 279

N. W. 272, l. c. 275, states:

> "* * * a fair interpretation and definition of the term 'pension' is reflected by the following authorities, as set forth in Words and Phrases:
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> "'A "pension" is a stated and certain allowance made and granted by the government for valuable services performed in its behalf. It is a reward for continuous faithfulness in the discharge of public duty, and is a compensation for the hazard of the employment. In re Roche, 141 App. Div. 872, 126 N.Y.S. 766, 768.' 3 Words and Phrases, Second Series, 952.
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> "'A "pension" is a bounty springing from the graciousness and appreciation of sovereignty. It may be given or withheld at the pleasure of a sovereign power. Because one is placed upon a pension roll under a valid law is no reason why that law may not be repealed and the pension cease.' Eddy v. Morgan, 216 Ill. 437, 75 N.E. 174, 178.' 3 Words and Phrases, Second Series, 952.
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> "'A pension is the regular allowance paid to an individual by the government in consideration of past services or in recognition of merit, and to the payment of which the whole resources of the government are pledged. Hawkins v. Randolph, 149 Ark. 124, 231 S. W. 556, 559.' 5 Words and Phrases, Third Series, 930.
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> "'A "pension" is usually regarded as a matter of grace and not of right. Gleason v. Board of Com'rs of Sedgwick County, 92 Kan. 632, 141 P. 584, 585.' 5 Words and Phrases, Third Series, 930."

It can be readily seen that compensation or salary paid for services performed is distinguishable from the retirement allowance or pension paid subsequent to retirement. The member of the system cannot be benefited by the county's contributions prior to his retirement and it cannot therefore be said that by this contribution his compensation or salary has been increased during his term of office.

Conclusion

In the premises, it is the opinion of this department that the funds contributed to the Public School Retirement System by a county as the employer of a Superintendent of Schools, do not amount to an increase in the Superintendent's compensation so as to be in contravention of Article VII, Section 13 of the Constitution of Missouri, 1945.

Respectfully submitted,

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APPROVED:

J. E. TAYLOR
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