

RETIREMENT SYSTEM:  
PENSIONS:  
STATE EMPLOYEES  
RETIREMENT SYSTEM:

The Missouri State Employees' Retirement System is not compelled to comply with the provisions of a power of attorney executed by one of its members to a credit union or any other

lending institution for the purpose of securing a loan made by said member and should not accept the tender of the instrument by a member or the lending institution.

OPINION NO. 169

October 1, 1970



Mr. Edwin M. Bode, Secretary  
Missouri State Employees'  
Retirement System  
State Capitol Building  
Jefferson City, Missouri 65101

Dear Mr. Bode:

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

"Is the Missouri State Employees' Retirement System compelled to comply with the provisions of a power of attorney executed by one of its members to a credit union or any other lending institution for the purpose of securing a loan made by said member. The power of attorney provides that the lender can collect the refund of the accumulated contributions of the member in the system as well as to endorse any check issued thereon so that the money will be payable to the lending institution."

In connection with the above, subsection 2 of Section 104.350, RSMo 1969, reads as follows:

Mr. Edwin M. Bode

"2. Upon withdrawal from service, any member who is not entitled to a normal annuity or disability benefits under the provisions hereof, shall receive, upon written application, a refund of the amount of his accumulated contributions to the fund."

In addition, subsection 2 of Section 104.540, RSMo 1969, reads in part as follows:

"2. Any annuity, benefits, funds property, or rights created by, or accruing to, any person under the provisions of sections 104.310 to 104.550, except in those cases where the employer-employee relationship has been terminated for reasons other than retirement, are hereby made and declared exempt from any tax if the state of Missouri or any political subdivision or taxing body thereof, and shall not be subject to execution, garnishment, attachment, writ of sequestration, or any other process or claim whatsoever, and shall be unassignable, . . ."

As a result of the above broad statutory provisions, it is our view that regardless of whether the instrument is a purported "power of attorney" or is in fact an "assignment", the retirement system is not obligated to comply with the provisions of such an instrument executed by one of its members to a lending institution and should not accept the tender of said instrument by the lending institution or the individual member.

Subsection 2 of Section 104.350, supra, expressly provides that the withdrawing employee "shall receive upon written application, a refund. . . ." In addition, subsection 2 of Section 104.540, supra, provides that except in those cases where the employer-employee relationship has been terminated for reasons other than retirement, funds accruing to any person "under the provisions of Sections 104.310 to 104.550," shall not be subject to execution, garnishment, attachment, writ of sequestration or any other process or claim whatsoever and shall be unassignable. . . ." We are therefore persuaded that the intent of the legislature in enacting the above statutes was to secure to the members the exclusive use and benefit of their contributions to the retirement system. There is authority for this proposition in the

Mr. Edwin M. Bode

case of United States v. Hall, 98 U.S. 343, 25 L.Ed. 180 (1879) involving the indictment of a guardian for the embezzlement of his ward's pension money. In this case, the Supreme Court of the United States pointed out that the intent of Congress in passing laws to prevent the diversion of pension money was so that said benefits would inure solely to the use and benefit of those to whom the pensions were granted. The language of the court at page 354 was as follows:

"Enough appears in these references to the legislation of the Congress under the Constitution to show that throughout the entire period since its adoption it has been the unchallenged practice of the Legislative Department of the Government, with the sanction of every President, including the Father of the Country, to pass laws to prevent the diversion of pension money from inuring solely to the use and benefit of those to whom the pensions are granted. With that view, sales, pledges, mortgages, assignments and every other kind of conveyance have been prohibited. Agents employed to collect the money have been required to make oath that they have no interest in such money by any such pledge, mortgage, transfer, agreement or arrangement, and that they know of none, and provision has several times been made for their punishment if they swear falsely."

Finally, in the case of Crowley v. New York State Employees' Retirement System, 296 N.Y.S.2d 616, (1969) it was held that an assignment by a deceased member's first wife to the deceased member's second wife and children of all her rights as the main beneficiary of the deceased member's account with the New York State Employees' Retirement System did not invade the future security or tend to diminish the member's fund during his lifetime. However, the Court also pointed out that it was apparent that the Legislature of the State of New York desired to relieve the Retirement System of the vast administrative work that would be necessary if the state honored executions, garnishments, attachments or any other process including assignments by its members. In addition, the Court pointed out that the legislature by prohibiting assignments sought to protect the member's future security (fund) from being improvidently dissipated by the member or others.

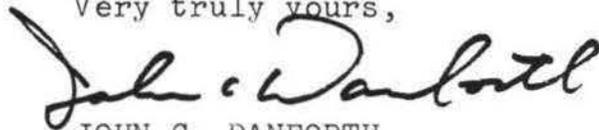
Mr. Edwin M. Bode

CONCLUSION

It is the opinion of this office that the Missouri State Employees' Retirement System is not compelled to comply with the provisions of a power of attorney executed by one of its members to a credit union or any other lending institution for the purpose of securing a loan made by said member and should not accept the tender of the instrument by a member or the lending institution.

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

Very truly yours,

A handwritten signature in cursive script, reading "John C. Danforth".

JOHN C. DANFORTH  
Attorney General