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ATTORNEY GENERAL OF MISSOURI
JEFFERSON CITY

June 26, 1974

OPINION LETTER NO. 222

Mr. G. L. Donahoe, Executive Secretary
Public School Retirement System
Post Office Box 268
Jefferson City, Missouri 65101

Dear Mr. Donahoe:

This letter is to acknowledge receipt of your request for an opinion from this office in regard to the authority of the Retirement System to promulgate the following regulation:

"2. A member of the system who is granted a sabbatical leave by his employer, will receive credit for the time spent on leave when contributions are withheld and remitted in the same manner as for other members rendering service for that employer if:

(a) The sabbatical leave is for the purpose of Study and Professional Improvement.

(b) The sabbatical leave is incorporated in the written terms of the Employment Contract and is in exchange for services actually rendered during the contract period and not a gratuity.

(c) The compensation provided for in the Employment Contract is at least 50% of the amount of the member's previous year's annual salary.

"Instances not covered under (a), (b), or (c) above shall be determined by the Board of Trustees upon the facts of each case."

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Generally, the Public School Retirement System of Missouri is provided for by Sections 169.010 through 169.130, RSMo 1973 Supp. In this regard, subsection 1 of Section 169.050, RSMo 1969, defines members of the system as follows:

" . . . all employees as herein defined of districts included in the retirement system thereby created shall be members of the system by virtue of their employment."

Subsection 6 of Section 169.010, RSMo 1973 Supp., defines "employees" as being synonymous with the term "teacher." The word "teacher" is defined in part in subsection 16 of Section 169.010, RSMo 1973 Supp., as follows:

" 'Teacher' shall mean any teacher, teacher-secretary, substitute teacher, supervisor, principal, supervising principal, superintendent or assistant superintendent, school nurse, or librarian who shall teach or be employed by any public school, state college or state teachers' college on a full-time basis and who shall be duly certificated under the law governing the certification of teachers; any county superintendent of schools, assistant county superintendent of schools and those employed by county superintendents of schools upon a full-time basis. . . ."

In addition, the word "employer" is defined in part in subsection 7 of Section 169.010, RSMo 1973 Supp, as follows:

" 'Employer' shall mean the district that makes payment directly to the teacher or employee for his services;"

Subsection 1 of Section 169.030, RSMo 1973 Supp., provides that contributions shall be made in equal amounts by "members of the system and their employers." Subsection 10 of Section 169.010, RSMo 1973 Supp., defines "membership service" as service rendered by a member of the Retirement System after the system becomes operative. Lastly, the board is granted authority to adopt rules and regulations by subsection 14 of Section 169.020, RSMo 1973 Supp., which provides:

"Subject to the limitations of sections 169.010 to 169.130, the board of trustees shall formulate and adopt rules and regulations for

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the government of its own proceedings and for the administration of the retirement system."

It should also be noted that Section 168.122, RSMo 1969, relating to leaves of absence by teachers, provides as follows:

"A board of education may establish policies for granting leave of absence including sabbatical leave, maternity leave, sick leave, and military leave. The board of education of a school district may, upon the written request of a teacher, and for good cause shown, grant a leave of absence or place him on a part-time teaching schedule for a period of one year, subject to renewal from year to year. Temporary part-time employment and military service shall not be counted as continuous full-time service in computing tenure but shall not impair the tenure previously acquired by teacher under sections 168.102 to 168.130. Any teacher under sections 168.102 to 168.130 who is called into active military service with the armed forces of the United States is eligible for reinstatement upon his discharge from said service without loss of tenure."

Similarly, Section 168.124, RSMo 1969, provides in part that under certain restrictions, the board of education of a school district may place on leave of absence as many teachers as may be necessary because of a decrease in pupil enrollment, school district reorganization, or the financial condition of the school district.

In connection with the above, it was held in Attorney General's Opinion No. 35, Gould, March 18, 1969, that public school boards may grant leaves of absence with pay to teachers for the purpose of study and professional improvement, and that the agreement to grant leaves must be incorporated in the written terms of the employment contract and must be in exchange for services actually rendered during the contract period and not a gratuity. In addition, it was further pointed out that contributions to the Public School Retirement System should be calculated during the teacher's leave of absence in the same manner as contributions are calculated during periods of actual service (copy of opinion attached). It was also held in Attorney General's Opinion Letter No. 42, Donahoe, May 12, 1972, that the board of trustees of the Public School Retirement System had the authority to adopt a regulation which would permit the Retirement System to receive contributions for a member

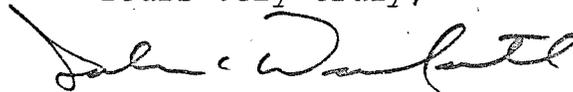
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who is on a leave of absence from his teaching position with compensation from the employer for the period spent on leave; and the system is authorized to allow membership service credit for the time spent on leave for which contributions were submitted by the employer.

In reviewing the proposed regulation, we note that subsections (a) and (b) which provide that a member will receive credit in the Retirement System if the sabbatical leave is for the purpose of study and professional improvement and is in exchange for services rendered during the contract period and not a gratuity, are taken from Attorney General's Opinion No. 35, Gould, March 18, 1969. In regard to subsection (c) relating to compensation, it is our understanding that when teachers go on sabbatical leave, they normally receive at least 50% of their previous year's salary. Under such circumstances, it is our view that this portion of the regulation is reasonable and not in conflict with subsection 16 of Section 169.010, RSMo, in that a teacher on sabbatical leave is considered to be a "full-time employee" by the employer. Therefore, the teacher and the employer would be required to make contributions to the Retirement System on the full amount of salary paid to teacher while on sabbatical leave, which salary would be not less than 50% of the member's previous year's salary rate.

In conclusion, it is our view that after reviewing the proposed regulation and the statutory authority conferred on the board by the legislature that proposed Regulation No. 2 is within the authority of the board of trustees of the Public School Retirement System to promulgate.

Yours very truly,



JOHN C. DANFORTH
Attorney General

Enclosure: Op. No. 35
3-18-69, Gould