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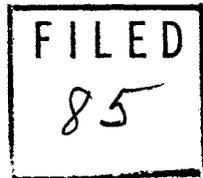
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June 24, 1985

OPINION LETTER NO. 85-85

Mr. Larry R. Gale
Director, Missouri Department
of Conservation
2901 North Ten Mile Drive
Jefferson City, Missouri 65101



Dear Mr. Gale:

This letter is in response to your request for an opinion of this office asking whether employees that the Missouri Department of Conservation classify as "term" or "temporary" employees are members of the Missouri State Employees' Retirement System.

You also state:

The Missouri Department of Conservation presently has three classes of employees and they are defined as follows: A) Permanent. An appointment authorized in a budget with Commission approval. B) Term. An appointment authorized and approved by the Director for a specific period, such as for a project or contract. Fringe benefits and classification procedures shall be identical to those authorized for permanent employees. Salaries, including cost-of-living increases, will be reviewed annually on the date of employment. C) Temporary. An appointment approved by the Division Chief, Staff Officer or Unit Head for up to one fiscal year. Employee may be reappointed if funding and needs have been justified.

Section 104.310(21)(a), RSMo Supp. 1984, with respect to the definition of "employee" provides in pertinent part:

Any elective or appointive officer or employee of the state who is employed by a

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department and earns a salary or wage in a position normally requiring the actual performance by him of duties during not less than one thousand hours per year, . . .

It is our view that if the department classifies an employee as a "term" employee or a "temporary" employee because the position does not normally require the actual performance by the employee of duties during one thousand hours per year or more, such an employee does not meet the statutory requirement. It is also our view, however, that the status of the employee in this respect should not be solely dependent on the departmental classification. That is, if the department has classified an employee as a "term" or "temporary" employee on the basis of limited hours of work and later determines that the employee's hours, based on a one-year period exceed the statutory minimum, the employee, if otherwise qualified and within such definition, should be retroactively reclassified as an employee for the purposes of the Missouri State Employees' Retirement System.

Yours very truly,



WILLIAM L. WEBSTER
Attorney General