

MISSOURI STATE EMPLOYEES
RETIREMENT SYSTEM:
RETIREMENT:

An individual is disqualified from receiving retirement benefits from the state retirement system if that individual works for a cumulative 1,000 or more hours per year for one or more departments with a year to run for 12 months from the annuity starting date and from each subsequent anniversary of said starting date.

August 17, 2001

OPINION NO. 169-2001

Honorable Merrill Townley
State Representative, District 112
State Capitol, Room 106B
Jefferson City, MO 65101

Dear Representative Townley:

You have submitted to this office a request for an opinion regarding the interpretation of certain provisions relating to the retirement benefits of state employees who work on a part-time basis for the state after they retire. You have asked whether the limitation of the 1,000 hours per year applies to all agencies combined, and you have asked how to compute the beginning and the end of the year in which the 1,000 hours limitation occurs. While this office was preparing the response to your request, the legislature adopted Senate Bill 371, which the Governor signed on July 13, 2001. The provisions of Senate Bill 371 directly impact our response to your inquiry.

An individual who retires as a vested employee from state government is entitled to draw retirement benefits depending upon which of the various options the retiree chooses. See, e.g. Sections 104.395, 104.401, and 104.1027.¹ For the Year 2000 Plan, those benefits are suspended if the retiree becomes an employee for any department. Senate Bill 371 amended Section 104.1039 and now provides:

¹Unless otherwise specified, all statutory references are to RSMo 2000.

If a retiree is employed as an employee by a department and works more than one thousand hours per year regardless of the number of positions held on or after the first day of employment, the retiree shall not receive an annuity or additional credited service for any month or part of a month for which the retiree is so employed. The system shall recover any benefit payments received by the retiree during any year that the retiree works more than one thousand hours pursuant to section 104.1060. The term "year" as used in this section shall mean the twelve-month period beginning on the annuity starting date and each subsequent year thereafter.

Department for the Year 2000 Plan is defined at Section 104.1003(10) in Senate Bill 371 as:

[A]ny department or agency of the executive, legislative, or judicial branch of the state of Missouri receiving state appropriations, including allocated funds from the federal government but not including any body corporate or politic unless its employees are eligible for retirement coverage from a system pursuant to this chapter as otherwise provided by law[.]

The Year 2000 Plan is a benefit plan applicable to the Missouri state employees' retirement system and to the transportation department and highway patrol retirement system. Section 104.1006.

The "closed" retirement plan benefits are also suspended if the retiree becomes an employee for any department. Senate Bill 371 amended Section 104.380 so it now provides:

If a retired member is elected to any state office or is appointed to any state office or is employed by a department and works more than one thousand hours per year regardless of the number of positions held on or after the first day of employment, the retired member shall not receive an annuity or additional creditable service for any month or part of a month for which the retired member is so employed. The system shall recover any benefit payments received by the retiree during any year that the retiree works more than one thousand hours pursuant to

section 104.490. The term “year” as used in this section shall mean the twelve-month period beginning on the annuity starting date and each subsequent year thereafter. The provisions of this section shall apply to all retired members employed on or after September 1, 2001, regardless of when the retired member was first employed. Any person who is an employee on or after August 28, 2001, retires and is subsequently employed in a position covered by the highways and transportation employees’ and highway patrol retirement system shall not be eligible to receive retirement benefits or additional creditable service from the system.

Section 104.010(20)(a) defines employee as a person who “earns a salary or wage in a position normally requiring the performance by the person of duties during not less than one thousand hours per year.” The new statutory provision quoted above that mandates the retirement system to recover annuities paid to any individual who works more than 1,000 hours in a year makes it abundantly clear that the 1,000 hours limitation applies to all agencies combined for which a retiree might be employed.

You have asked when does the 1,000 hours per year begin to run and when does it end. Because the definition of employee includes a reference to the number of hours worked in one year, the issue is when does “a year begin and end.” Depending upon the context, a “year” can constitute a calendar year, a fiscal year, or 12 months from a date certain, such as retirement date. “When the period of a ‘year’ is named, a calendar year is generally intended, but the subject-matter or context of statute or contract in which the term is found or to which it relates may alter its meaning.” BLACK’S LAW DICTIONARY 1615 (6th ed. 1990). Moreover, Section 1.020 provides that:

As used in the statutory laws of this state, unless otherwise specially provided or unless plainly repugnant to the intent of the legislature or to the context thereof:

....

(10) . . . “year” means a calendar year . . . and is equivalent to the words “year of our Lord”[.]

As shown above, however, the legislature has defined in both amended Sections 104.380 and 104.1039 “[t]he term ‘year’ as used in this section shall mean the twelve-month period beginning on the annuity starting date and each subsequent year thereafter.”

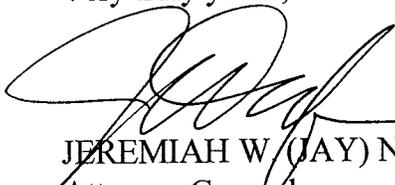
Statutory construction is utilized to ascertain the intent of the legislature from the language used and give effect to that intent if possible. *Trailer Corporation v. Director of Revenue*, 783 S.W.2d 917 (Mo. banc 1990). It is clear that the legislature has enacted a retirement plan for state employees that requires suspension of retirement benefits when a state retiree becomes again a state employee. In doing that, however, the legislature recognized that there may be circumstances in which state government would be well served by utilizing experienced retirees on a part-time basis. Accordingly, to be classified as an “employee,” an individual has to work at least 1,000 hours in one year and, as shown above, in this context, one year is the 12-month period beginning on the annuity starting date and on its anniversary thereafter.

Another purpose of limiting how much a state retiree can work for the state and still draw retirement benefits is to eliminate “double dipping” in which an individual can draw retirement and draw a salary while earning additional retirement benefits. That issue has been addressed by suspension of benefits while such an individual is an “employee” as defined in the retirement statutes. This purpose would be defeated if an individual could work 999 hours in one calendar year for one agency and 999 hours in the same year for another agency. It is clear, therefore, that the limitation of working less than 1,000 hours in a calendar year is cumulative for all agencies for which an individual may work.

CONCLUSION

An individual is disqualified from receiving retirement benefits from the state retirement system if that individual works for a cumulative 1,000 or more hours per year for one or more departments with a year to run for 12 months from the annuity starting date and from each subsequent anniversary of said starting date.

Very truly yours,



JEREMIAH W. (JAY) NIXON
Attorney General