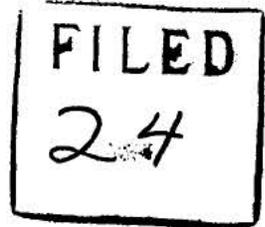


SCHOOL:
PUBLIC SCHOOL:
RETIREMENT FUND:

Mandatory retirement at age 70 not effective during duration of World War II which will not terminate until treaties of peace or until other proper governmental action.

February 14, 1947



Honorable G. L. Donahoe
Executive Secretary
Public School Retirement System
Jefferson City, Missouri

Dear Sir:

This department is in receipt of your request for an official opinion, which reads as follows:

"We would appreciate an opinion on the following question concerning House Bill 151 of the 63d General Assembly:

"'Will the mandatory retirement provision of the Public School Retirement Act as stated in Subsection 1 of Section 6 of the Act become effective as of July 1, 1947.'

"We are requesting this opinion so that we may know the effect of President Truman's Executive Order declaring cessation of hostilities as of December 31, 1946."

House Bill No. 151, enacted by the 63rd General Assembly, sets up a retirement system for public school teachers. Section 6 (1) provides that a person who is 70 years of age or more one year after the date the retirement system becomes operative shall be retired as of that date. However, the section further provides that "the compulsory retirement age shall not be effective for the duration of World War II." House Bill No. 151 went into effect on August 1, 1945.

On December 31, 1946, the President of the United States issued Proclamation No. 2714, which reads as follows:

"With God's help this nation and our allies, through sacrifice and devotion, courage and

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perseverence, wrung final and unconditional surrender from our enemies. Thereafter, we together with the other United Nations, set about building a world in which justice shall replace force. With spirit, through faith, with a determination that there shall be no more wars of aggression calculated to enslave the peoples of the world and destroy their civilization, and with the guidance of Almighty Providence great gains have been made in translating military victory into permanent peace. Although a state of war still exists, it is at this time possible to declare, and I find it to be in the public interest to declare, that hostilities have terminated.

"Now, therefore, I, Harry S. Truman, President of The United States of America, do hereby proclaim the cessation of hostilities of World War II, effective twelve o'clock noon, December 31, 1946.

"In witness whereof, I have hereunto set my hand and caused the seal of the United States of America to be affixed.

"Done at the City of Washington this 31st day of December in the year of our Lord Nineteen Hundred and Forty-Six, and of the Independence of the United States of America the one hundred and seventy-first."
(Underscoring ours)

On the same date, a Statement was issued by the President which said:

"I have today issued a proclamation terminating the period of hostilities of World War II, as of 12 o'clock noon today, December 31, 1946.

"Under the law, a number of war and emergency statutes cease to be effective upon the issuance of this proclamation. It is my belief that the time has come when such a declaration can properly be made, and that it is in the public interest to make it. Most of the

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powers affected by the proclamation need no longer be exercised by the executive branch of the Government. This is entirely in keeping with the policies which I have consistently followed, in an effort to bring out economy and our government back to a peacetime basis as quickly as possible.

"The proclamation terminates government powers under some 20 statutes immediately upon its issuance. It terminates government powers under some 33 others at a later date, generally at the end of 6 months from the date of the proclamation. This follows as a result of provisions made by the Congress when the legislation was originally passed. In a few instances the statutes affected by the Proclamation give the government certain powers which in my opinion are desirable in peacetime, or for the remainder of the period of reconversion. In these instances, recommendations will be made to the Congress for additional legislation.

"It should be noted that the proclamation does not terminate the states of emergency declared by President Roosevelt on September 8, 1939, and May 27, 1941. Nor does today's action have the effect of terminating the state of war itself. It terminates merely the period of hostilities. With respect to the termination of the national emergency and the state of war I shall make recommendations to the Congress in the near future." (Underscoring ours)

From a reading of the Proclamation and the Statement, it will be seen that a cessation of hostilities only is declared and both the Proclamation and the Statement recognize that a state of war still exists. As pointed out in the Statement, certain statutes which will remain in force "until the cessation of hostilities" (55 Stat. 246, Sec. 403 (H); 57 Stat. 42 c. 20) and other statutes which will remain in force until "6 months after the cessation of hostilities" (56 Stat. 1041 c. 680, 57 Stat. 65 c. 62) are affected by the Proclamation. As was said in Kahn v. Anderson, 255 U. S. 1, 65 L. ed. 469, 1.c. 474:

"* * * That complete peace, in the legal sense, had not come to pass by the effect of the Armi-

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stice and the cessation of hostilities, is not disputable. * * *

In Hamilton v. Kentucky Distilleries and Warehouse Company, 251 U. S. 146, 64 L. ed. 194, Mr. Justice Brandeis, speaking for the court, said at l.c. 203:

"In the absence of specific provisions to the contrary the period of war has been held to extend to the ratification of the Treaty of Peace or the proclamation of peace.* * *"

Again in Commercial Cable Company v. Burleson, 25 Fed. 99, Judge Learned Hand rejected the contention that the cessation of hostilities terminated World War I when he said at l.c. 104:

"* * * Had they intended that a suspension of hostilities should terminate the right, they would not have said precisely the contrary. Nor did they change by any limitation of the Constitution that I know. Even if I were to assume that the power were only coextensive with a state of war, a state of war still existed. It is the treaty which terminates the war.* * *"

In view of the above authorities, it will be seen that the Presidential Proclamation of December 31, 1946, which declared a cessation of hostilities, did not terminate the state of war itself, and any statute that is effective during the duration of World War II is still in full force and effect.

CONCLUSION

It is, therefore, the opinion of this department that the mandatory retirement provision of the Public School Retirement Act, Section 6 (1) of House Bill No. 151, which provides that such a provision shall not be effective during the duration of World War II is not effected by the Presidential Proclamation No. 2714, December 31, 1946, which declared the cessation of hostilities because a state of war exists until a treaty is signed and not just until the cessation of hostilities. Therefore, the mandatory retirement provision will not be effective until such date as a peace treaty is signed or the termination of the war is declared by appropriate governmental action.

APPROVED:

Respectfully submitted,

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Attorney General

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Assistant Attorney General