

PUBLIC SCHOOL RETIREMENT ACT: Teachers in state
training schools and school
at Mt. Vernon not included.

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August 25, 1947

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

Dear Sir:

We have your letter of recent date which reads
as follows:

"The Public School Retirement Act, which became effective August 1, 1945, and which was amended by House Bills 642 and 1010 of the 63rd General Assembly, provides in Sub-section (1) of Section 1 that, 'Public School' shall mean any school conducted within the state under the authority and supervision of a duly elected District or City or Town Board of Directors or Board of Education and the board of Regents of the several State Teachers Colleges, or State Colleges, and also the State of Missouri and each county thereof, to the extent that the state and the several counties are employers of teachers as hereinafter designated.'

In Sub-section (6) of Section 1, the term 'teacher' is defined in part 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

Sub-section (1) of Section 5 reads as follows:
'On and after the effective date of this Act, 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.'

In Section 38 of Article 4 of the Constitution 1945, training schools are classified as educational institutions. In the Laws of Missouri 1945, providing for the creation and establishment of a Department of Corrections and prescribing its duties and powers, we find that it is the duty of each training school to provide an educational program.

We request an official opinion as follows:

(1) Are the full-time certificated teachers in the State Training Schools at Boonville, Chillicothe and Tipton members of the Public School Retirement System of Missouri by virtue of employment?

(2) Are the full-time certificated teachers in the State Sanatorium at Mt. Vernon members of the Public School Retirement System of Missouri by virtue of employment?"

The Public School Retirement Act mentioned in your letter is a new law and has not been before the Courts. We must therefore try to determine what the intention of the Legislature was with respect to the questions you submit by analyzing the act and related acts.

The purpose of the act as set forth in Section 2, P. 1355, L. 1945, is to provide "retirement allowances and other benefits for public school teachers". To determine who is entitled to the benefits provided by the act, it is therefore necessary to determine who are "public school teachers" as that term is used in the act.

Section 1 of the act, as amended, P. 1383, L. 1945, defines "Public School" as follows:

"(1) 'Public School' shall mean any school conducted within the state under the authority and supervision of a duly elected District or City or Town Board of Directors or Board of Education and the board of Regents of the several State Teachers Colleges, or State Colleges, and also the State of Missouri and each county thereof, to the extent that the state and the several counties are employers of teachers as hereinafter designated."

At first blush it would appear that the training schools you mention, being schools conducted under the supervision of the state, might be included in the school systems covered by the act. It should be observed, however, that schools conducted by the state are included only "to the extent that the state and the several counties are employers of teachers as hereinafter designated." Sub-section 6 of Section 1 of the act designates in detail what teachers are included. Said sub-section reads as follows:

"(6) '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 and who shall be duly certified under the law governing the certification of teachers: and the state superintendent of public schools or commissioner of education, persons employed in the State Department of Education or by the State Board of Education in an executive capacity and other persons employed by said State Board of Education on a full-time basis who shall be duly certificated under the law governing the certification of teachers, provided that this clause shall not be construed to include employees of the University of Missouri or Lincoln University."

Under Sub-section (6), supra, the only teachers employed by the state who are included in the term "Teachers" as used in the act are those employed in the State Teachers Colleges or State Colleges, the State Superintendent of Public Schools or Commissioner of Education, those employed in the State Department of Education or by the State Board of Education in an executive capacity and those employed by the State Board of Education on a full-time basis. Teachers at the University of Missouri are expressly excluded by said sub-section. Teachers in the training schools are not employed by the State Board of Education nor by the State Department of Education. They are employed by a Board of Trustees as provided by Section 38, Article IV of the Constitution of Missouri which reads as follows:

"All state training schools and industrial homes for boys and girls shall be classified as educational institutions and shall be in charge of a board of six trustees, three from each of the two major political parties, appointed by the governor by and with the advice and consent of the senate. All employees of the board shall be selected and removed as provided for employees in the state eleemosynary institutions."

By the definitions in the very first section of the act it is clear that only certain designated teachers employed by the state are to be included under the act. Furthermore, Section 11 of the act, p.1365, L. 1945, definitely shows that only teachers employed by the State Board of Education are to be included. Said Section 11 reads as follows:

"To meet the requirements of the retirement system for the period between the time when this Act shall take effect and the time when sufficient contributions to the system are transmitted by employers, the board of trustees shall have authority to accept on behalf of the system such grants or appropriations as may be made to them or it by the General Assembly of Missouri and to repay and return the same to the State Treasury when funds of the system sufficient therefor are available. Provided that any funds appropriated by the General Assembly shall be repaid within two years after the effective date of this Act and

provided further that the State of Missouri shall contribute no funds directly or indirectly to finance the plan to pay retirement allowances by appropriation bills or otherwise, except for payments or contributions of persons employed by the State Board of Education as provided in paragraph (6) of Section 1 of this Act, and except those funds which the District may receive from time to time under a law or laws providing for a general apportionment of school moneys throughout all the State."

It is thus provided that the employer's part of contributions to the retirement funds shall be paid by the state only on teachers employed by the State Board of Education as provided in paragraph (6) of Section 1 which was set out above.

That only teachers employed by the State Board of Education were to be included in the act was further shown by the appropriation acts passed by the same Legislature which passed the retirement act. By the appropriation acts for the State Board of Education (pp 408-412, L. 1945) money with which to pay teacher retirement by that department is expressly provided for. In the appropriation acts for the training school for boys at Boonville (pp 484-485, L. 1945), the Industrial Home for Girls at Chillicothe (pp 486-487, L. 1945) and the Industrial Home for Negro Girls at Tipton (pp 488-489, L. 1945), no money is provided for payment of teacher retirement. Had the Legislature considered that teachers in the last named institutions were included in the retirement system it would certainly have provided funds with which to pay the employer's part of such plan.

What is said above applies also to teachers employed in the State Sanatorium at Mt. Vernon. They are not employed by the State Board of Education, but are employed by the Department of Public Health and Welfare (p 945, L. 1945).

Conclusion

It is, therefore, the opinion of this department that full-time certified teachers in the State Training Schools at Boonville, Chillicothe and Tipton and in the State Sanatorium at Mt. Vernon are not members of the Public School Retirement System by virtue of their employment.

Very truly yours,

Harry H. Kay
Assistant Attorney General

APPROVED:

J. E. Taylor
Attorney General

HHK/vlv