

Answered by Letter - Jones  
OPINION LETTER NO. 22

April 26, 1971



Mr. Edwin M. Bode, Secretary  
Missouri State Employees'  
Retirement System  
Capitol Building  
Jefferson City, Missouri 65101

Dear Mr. Bode:

This letter is to acknowledge receipt of your request for an opinion from this office which reads in part as follows:

"Advice is requested as to the determination of the amount of benefits due a member of the Retirement System who has ceased to be an employee of the State of Missouri sometime prior to his Normal Retirement Date. We are referring to a member at least sixty years of age who has accumulated fifteen or more years of creditable service or who has served six or more years as a member of the General Assembly, and in either case, has not been refunded his accumulated contributions to the Fund.

\* \* \*

"Our question is: Shall the amount of benefits be determinable at the time

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the member ceases to be an employee, or  
at the time he is eligible for benefits?"

The assumption is made that the opinion request refers to an individual who is not presently employed by the state; and who does not reenter state employment in the future.

In Attorney General's Opinion No. 188, Bode, 9-16-69, it was held that an individual who is sixty years of age, with fifteen years of creditable service in the state retirement system, but who has not retired and who is no longer a contributing member of the system, may not receive an increase in retirement benefits as provided for in House Bill No. 480 of the Seventy-fifth General Assembly, if such person does not reenter state employment. (copy enclosed.) The reasoning of the opinion was in accordance with the decision in State ex rel Breshears v. Missouri State Employees' Retirement System, 362 S.W.2d 571 (1962). In this case, it was held by the Supreme Court of Missouri, sitting en banc, that a 1961 amendment to a 1957 statute permitting payment of increased benefits to retired members (emphasis ours) of the Missouri State Employees' Retirement System would take a portion of the fund existing when the amendment was passed to pay the increase and would impair a contract with active members in violation of Section 13, Article I, of the Missouri Constitution.

It is submitted that the same consideration is applicable to the matter that has been presented. In line with the reasoning in the Breshears case, an individual who is not presently employed by the state; and who does not make contributions to the System, would not be entitled to increased benefits upon being eligible for retirement, as this would necessarily involve taking a portion of the existing retirement fund to pay the additional benefits to individuals who are not presently employed by the state. Consequently, such action would constitute an impairment of contract in violation of Section 13, Article I, of the Missouri Constitution as to all active members who have since continued to contribute to the Retirement System.

It is therefore our opinion that the amount of retirement benefits due a member of the retirement system who has ceased to be an employee of the state, sometime prior to his normal retirement date, but is at least sixty years of age and who has accumulated fifteen or more years of creditable service or served

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six or more years as a member of the general assembly, and has not been refunded his accumulated contributions to the fund; are determined under the law in effect at the time the member ceases to be an employee of the state.

Very truly yours,

JOHN C. DANFORTH  
Attorney General

Enclosure:

Op. No. 188  
9-16-69, Bode