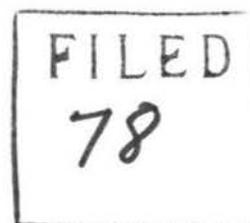


RETIREMENT:
RETIREMENT SYSTEM:
PENSION:
STATE EMPLOYEES' RETIREMENT
SYSTEM:

Pursuant to the provisions of subsection 3 of Section 104.380, RSMo 1969, an individual electing to retire as a member of the Missouri State Legislature is not entitled to a refund of contributions made by said member as an employee of the state prior to six years service as a member of the legislature.

OPINION NO. 78

May 21, 1971



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

Dear Mr. Bode:

This is to acknowledge receipt of your request for a formal opinion from this office which reads as follows:

"Pursuant to the provisions of Section 104.380, R.S. of Mo., 1969, would a person retiring as a member of the Missouri State Legislature be entitled to a refund of contributions made by said member as an employee of the State prior to his or her service as a member of the Legislature."

In connection with the above, subsection 3 of Section 104.380, RSMo 1969, reads as follows:

"If a member, after serving six or more years as a member of the general assembly, is elected to a state office or is appointed to a state office or employment, he may, at the end of such term or employment, elect to take on retirement the amount which shall be due him for his creditable service as a member of the

Mr. Edwin M. Bode

general assembly or that which would be due him as such officer or employee. If he elects to accept the legislative retirement benefits, the amount of his accumulated contributions to the fund made during such term or employment shall, upon written application, be refunded to him."

It is our understanding that the individual in question was employed by the State Department of Revenue from January of 1959 until December of 1962. During this time, he paid in the normal amount toward his retirement. Thereafter, he commenced his duties as a member of the General Assembly and served from January, 1963 until January 1971. It is submitted that the issue for consideration is the interpretation of the statutory phrase "After serving six or more years as a member of the general assembly." Is a person retiring as a member of the Missouri State Legislature entitled to a refund of contributions made by said member as an employee of the State prior to six years service as a member of the general assembly?

House Bill No. 33 of the Seventy-fourth General Assembly repealed Section 104.380, RSMo 1959 relating to the State Employees Retirement System and enacted in lieu thereof one new section to be known as Section 104.380, relating to the same subject matter and specifically including subsection 3 of Section 104.380, RSMo. Under this statutory provision, an individual after serving six or more years as a member of the general assembly and who then subsequently works for the state in another capacity, may, if he elects to retire as a member of the general assembly, receive the amount of his accumulated contributions to the fund for the period of subsequent state employment. However, there is authority for the proposition that where statutes are plain, unambiguous, and simple, there is no room for construction and they must be applied by courts as they are written by the legislature. United Air Lines, Inc. v. State Tax Commission, 377 S.W.2d 444 (Mo. 1964). Therefore, it is our view that the language of the statute clearly and unambiguously provides that an individual electing to retire as a member of the general assembly may receive a refund of his contributions only when a member is elected to a state office or is appointed to a state office or employment after he has served six or more years as a member of the general assembly.

CONCLUSION

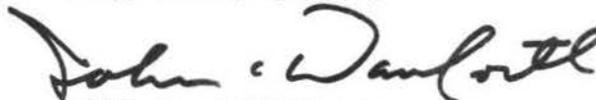
It is the opinion of this office that pursuant to the provisions of subsection 3 of Section 104.380, RSMo 1969, an individual electing to retire as a member of the Missouri State Legislature is

Mr. Edwin M. Bode

not entitled to a refund of contributions made by said member as an employee of the state prior to six years service as a member of the legislature.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, B. J. Jones.

Very truly yours,

A handwritten signature in cursive script that reads "John D. Danforth". The signature is written in black ink and is positioned above the printed name and title.

JOHN D. DANFORTH
Attorney General