

February 9, 1972

OPINION LETTER NO. 9
Answer by letter-Jones

Honorable Maurice Schechter
Senator, District 13
Room 427, Capitol Building
Jefferson City, Missouri 65101



Dear Senator Schechter:

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

"In March 1970, you issued an opinion to Senator VanLandingham relating to additional compensation to teachers based upon life, health and other insurance furnished by the school district to the teacher. Your ruling stated such insurance was additional compensation, chargeable [sic] to the teachers fund and subject to the state income withholding tax.

"Senate Bill 270 of the 76th General Assembly, approved by the Governor eliminates the same being subject to state income [sic] tax, which also includes retirement plans.

"If such fringe benefits are income to the teacher, should such amounts be included in the total compensation for teachers retirement which is presently paid 8% by the teacher and 8% by the school district? If your ruling is in the affirmative, is there a specific formula in determining the amount of such compensation as generally the rates of insurance vary, based upon the age and sex of the individual, but are usually prorated and a lump sum paid by the employer, being the school district in this case."

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The Public School Retirement System of Missouri is provided for in Sections 169.010 through 169.130, RSMo 1969. The system includes all school districts in this state, except those in cities that had populations of four hundred thousand or more according to the latest census. Subsection 3 of Section 169.030, RSMo 1969, provides for member contributions to the Retirement System and reads as follows:

"The contributions of members of the retirement system shall be collected by their employers through appropriate deductions from pay checks. The total amount deducted from the pay checks of members during any school year shall equal such a percent of their salary rates as may be required by the contribution rate then in effect." (Emphasis added)

In addition, accumulated contributions of a member are defined in subsection 1 of Section 169.010, RSMo 1969, as follows:

"(1) 'Accumulated contributions' shall mean the sum of the annual contributions a member has made to the retirement system through deductions from his salary, plus interest compounded annually on each year's contributions from the end of the school year during which such contributions were made;" (Emphasis added)

Senate Bill No. 270 was passed by the 76th General Assembly and signed by the Governor. This was an act to repeal Section 143.100, RSMo 1969, relating to income tax and to enact in lieu thereof one new section relating to the same subject. Specifically, subsection 7 of Section 143.110, RSMo 1969, now provides as follows:

"7. The amount to be included in the gross income of an employee attributable to contributions by or cost to his employer for group term life insurance, accident and health plans and pensions or profit-sharing plans on his behalf, or attributable to amounts received by an employee under such accident and health plans, or attributable to any agreement with his employer for a salary adjustment in return for a deferred compensation arrangement between the employer and the employee, shall be the same as, and not in excess of, the amount properly includable in the gross income of the employee pursuant to the provisions of the Internal Revenue Code of the United States."

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It should be noted that this office has previously held in three former opinions that a school board has the discretionary authority to pay the premiums on liability insurance, life insurance, and health and accident insurance to its employees as part of their compensation (Opinion No. 93, Cason, 9-9-69; Opinion No. 452, Branom, 10-23-69; Opinion No. 500, Vanlandingham, 11-18-69, copies enclosed). More specifically, in Opinion No. 93 in construing the applicable statutes dealing with the employment of teachers, it was held that the terms "wages," "salary," and "compensation" were synonymous. Therefore, it is our view that consistent with Opinion No. 93 and subsection 1 of Section 169.010, supra, and subsection 3 of Section 169.030, supra, a board of education, having decided to purchase liability insurance, health and accident insurance, or life insurance for teachers as part of their compensation, must consider the amount of the premiums as part of the teachers' total compensation; and thus a deduction for payment of contribution to the Public School Retirement System must be made. In this connection, Senate Bill No. 270 refers to the amount to be included in gross income for purposes of income tax and makes no reference to Chapter 169 or any other statute. We are not persuaded that Senate Bill No. 270 has any effect on the determination that the purchase of insurance by a school board as part of a teacher's compensation must be considered as part of the teacher's total compensation; and a deduction for payment of contributions to the Public School Retirement System is required under Chapter 169, even though the premiums may be non-taxable for income tax purposes. In this regard, there is authority for the proposition that repeals by implication are not favored and in order for a later statute to operate as a repeal by implication of an earlier one, there must be such manifest and total repugnance that the two cannot stand, but where two acts are seemingly repugnant, they must, if possible, be so construed that the latter may not operate as a repeal of the earlier one by implication. State v. Ludwig, 322 S.W.2d 841 (Mo. banc 1959). It is, therefore, our opinion that a board of education purchasing insurance as part of a teacher's compensation must consider the amount of the premiums as part of the teacher's total compensation; and a deduction for payment of contributions to the Public School Retirement System of Missouri must continue to be made.

In reference to your second question as to whether there is a specific formula in determining the amount of such compensation as generally the rates of insurance vary, based upon the age and sex of the individual, it is our opinion that this is a matter to be

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decided by each board of education and its employees, after consultation with their insurance carrier.

Yours very truly,

JOHN C. DANFORTH
Attorney General

Enclosures: Op. No. 500
11-18-69, Vanlandingham

Op. No. 452
10-23-69, Branom

Op. No. 93
9-9-69, Cason