

July 21, 1972

OPINION LETTER NO. 189
Answer by letter-Jones

Mr. Clyde Burch
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Dear Mr. Burch:

This letter is to acknowledge receipt of your request for an opinion from this office in regard to whether the passage of Senate Bill No. 427, by the Second Regular Session of the 76th General Assembly, by implication excludes state college teachers from membership in the Public School Retirement System of Missouri.

Senate Bill No. 427, Second Regular Session of the 76th General Assembly, which will be effective August 13, 1972, repeals Section 174.030, RSMo 1969, and enacts in lieu thereof, one new section which reads as follows:

"174.030. The board of regents of each state teachers college may in its discretion change the name of its college as provided by section 174.020 by eliminating from the name of the institution the words 'teachers college' or any of such words and to add the word 'university' in lieu of the word 'college', and to change the name of the board as provided by section 174.040 by eliminating therefrom the word 'teachers' and to add thereto the word 'university' in lieu of the word 'college'; and thereafter the institutions and boards shall have and enjoy the same rights and privileges as are granted to teachers colleges by law, but nothing herein contained shall be construed to grant authority to such institutions to confer post graduate degrees except those

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which may be necessary to the training of teachers for the free public schools of the state, or degrees other than those in education and arts and sciences, nor does it grant additional powers or authorities to those institutions or or those boards not enjoyed by other colleges or boards whose names are not changed."
(Emphasis ours)

The Public School Retirement System of Missouri is provided for in Sections 169.010 through 169.130, RSMo 1969, for the purpose of providing retirement allowances and other benefits for certain public school teachers. In this regard, the phrase "public school" is defined in part in subsection 12 of Section 169.010, RSMo 1969, as follows:

"(12) 'Public School' shall mean any school conducted within the state under the authority and supervision of . . . the board of regents of the several state teachers' colleges, or state colleges, . . ."

Also, the word "teacher" as defined in part in subsection 16 of Section 169.010, RSMo 1969, as follows:

"(16) '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 . . . provided, that this clause shall not be construed to include employees of the university of Missouri or Lincoln university;" (Emphasis ours)

It is a well known rule of statutory construction that repeals by implication are not favored; and in order for a later statute to operate as a repeal by implication of an earlier statute, there must be such manifest and total repugnance that the two cannot stand. In addition, even 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 and if statutes are not irreconcilably inconsistent both must stand. State v. Ludwig, 322 S.W.2d 841 (Mo. banc 1959) and State ex rel. Preisler v. Toberman, 269 S.W.2d 753 (Mo. banc 1954). Furthermore, the primary rule of statutory construction is to ascertain and give effect to legislative intent, and in so doing courts should give words used their plain and ordinary meaning. City of Kirkwood v. Allen, 399

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S.W.2d 30 (Mo. banc 1966). In this connection, Senate Bill No. 427 provides that a board of regents of a state teachers' college may eliminate the words "teachers' college or any of such words" from the name of the institution and substitute the word "university" for the word "college." However, it is to be noted that this legislation also provides that a state teachers' college which initiates action to change its name, shall nevertheless have and enjoy the same rights and privileges as are granted to it by law, and does not receive additional powers or authority, not enjoyed by other colleges or boards whose names are not changed. As a result, it is our view that the legislature did not intend by the passage of Senate Bill No. 427 that the legal status of a state teachers' college was to be changed, other than the board of regents of each state teachers' college having discretionary authority to substitute the word "university" for the words "teachers' college" or for the word "college" in the name of the institution.

It is, therefore, our opinion that the passage of Senate Bill No. 427 by the Second Regular Session of the 76th General Assembly does not exclude state teachers' college teachers from membership in the Public School Retirement System of Missouri.

Yours very truly,

JOHN C. DANFORTH
Attorney General