

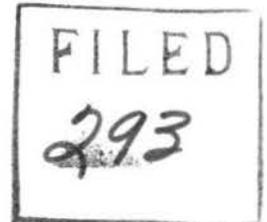
PENSIONS:
RETIREMENT:
STATE EMPLOYEES:

An individual who is presently re-
tired and receiving retirement bene-
fits which were calculated by mul-
tiplying one percent of his average
pay (not to exceed \$7,500 per year) during the five consecutive years
of work when his pay was the greatest, times his years of creditable
service, is not entitled to receive additional compensation under
House Bill No. 1178, Second Regular Session, 76th General Assembly
as a result of the change in the definition of average compensation
in October of 1967.

OPINION NO. 293

December 13, 1972

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



Dear Mr. Bode:

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

"Advice is requested as to whether or not an
individual who is presently retired and re-
ceiving retirement benefits which were calcu-
lated by multiplying one percent of his aver-
age pay (not to exceed \$7,500 per year) dur-
ing the five consecutive years of work when
his pay was the greatest, times his years of
creditable service, is entitled to have his
benefits recalculated under House Bill 1178,
as a result of the change in the definition
of average compensation from \$7,500 to \$15,000
in 1967."

Section 1 of House Bill No. 1178, which was passed by the 76th
General Assembly and signed by the Governor, reads as follows:

"1. Any person, other than a person receiv-
ing retirement benefits because of service in
the general assembly, who, on the effective
date of this act, is receiving state retire-
ment benefits from the Missouri state employ-
ees' retirement system or the highway employ-
ees' and highway patrol retirement system, upon

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application to the board of trustees of the system from which he is receiving retirement benefits, shall be made, constituted, appointed and employed by the board as a special consultant on the problems of retirement, aging, and other state matters, for the remainder of his life, and upon request of the board, or other state agencies where such person was employed prior to retirement, give opinions, and be available to give opinions in writing, or orally, in response to such requests, as may be required, and for such services shall be compensated monthly, in an amount, which, when added to any monthly state retirement benefits being received, shall be equal to the state retirement benefits such person would have received if he had retired on January 1, 1972."
(Emphasis ours)

In connection with the above, you have also provided us with the following example:

"Law at retirement		under #1178 - ?
5-1-67 - 21 years 11 months		
	service	
4 mos. 1967 -	2,500.00	4,634.90
1966 -	7,500.00	15,000.00
1965 -	7,500.00	14,044.28
1964 -	7,500.00	13,500.00
1963 -	7,500.00	11,544.22
8 mos. 1962 -	5,000.00	7,333.29
	\$136.98 monthly	\$241.28 monthly"

House Bill No. 1178 provides that any person other than an individual receiving retirement benefits because of service in the General Assembly who is receiving retirement benefits from the Missouri State Employees' Retirement System, may be employed as a special consultant. A special consultant is to be compensated in an amount which, when added to any monthly state retirement benefits being received, would be equal to the state retirement benefits such person would have received if he had retired on January 1, 1972. The question then arises as to the interpretation of the date of January 1, 1972. In this regard, we will confine ourselves in this opinion request to an interpretation of House Bill No. 1178 as it relates to the Missouri State Employees' Retirement System and will not consider questions relating to the "Missouri Highway Employees and Highway Patrol Retirement System."

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When the Missouri State Employees' Retirement System was established in 1957, Section 104.390, RSMo, provided in part that the normal annuity of a member should equal five-sixths of one percent ($5/6$ of 1%) of the average compensation of the member multiplied by the number of years of creditable service of each member. Subsection 6 of Section 104.310, RSMo, provided in part that "average compensation" was the average annual compensation, not to exceed seven thousand five hundred dollars (\$7,500) paid to a member for the five consecutive years of service prior to retirement when his compensation was greatest. See Laws of Missouri 1957, pages 707, 708 and 716. In 1961, Section 104.390, RSMo, was repealed and a new section enacted which provided that the normal annuity of a member should equal one percent (1%) of the average compensation of the member multiplied by the number of years of creditable service. See Laws of Missouri 1961, page 544. However, the definition of "average compensation" was not changed at this time and the maximum figure of seven thousand five hundred dollars (\$7,500) remained in effect. Thereafter, in 1967, subsection 6 of Section 104.310 was repealed and a new section enacted so that the definition of "average compensation" read as follows:

"(6) 'Average compensation' the average annual compensation paid to a member for the five consecutive years of service prior to retirement when his compensation was greatest: or if the member had less than five consecutive years of service, the average annual compensation paid to the member during the entire period of this service; provided, that any compensation paid which enters into total compensation shall not exceed Fifteen Thousand Dollars per annum if paid after the effective date of this act or Seven Thousand Five Hundred Dollars if paid prior to the effective date of this act."
(Emphasis ours) See Laws of Missouri 1967, page 188

The one percent (1%) formula as set forth in Section 104.390, RSMo 1969, was not changed at this time. Subsequently, Section 104.390, RSMo, and subsection 6 of Section 104.310, RSMo, were changed by the repeal and reenactment of these sections in Senate Bill No. 548, which was signed by the Governor and enacted into law on August 13, 1972. However, it is important to note that the one percent (1%) formula as set forth in Section 104.390, RSMo 1969, and the definition of "average compensation" as set forth in subsection 6 of Section 104.310, RSMo 1969, was the law in effect on January 1, 1972, before Senate Bill No. 548 was signed by the Governor and enacted into law on August 13, 1972.

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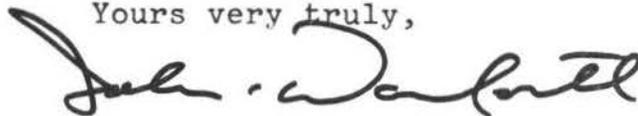
In connection with the above, subsection 6 of Section 104.310, RSMo 1969, in defining "average compensation," and which was the law in effect on January 1, 1972, provides that any compensation paid which enters into total compensation shall not exceed seven thousand five hundred dollars (\$7,500) if paid prior to October 13, 1967. In this regard, there is much authority to support the proposition that if the language used in a statute is plain and unambiguous, there is no reason for any construction. United Air Lines, Inc. v. State Tax Commission, 377 S.W.2d 444 (Mo. Banc 1964). Under such circumstances, it is our view that on January 1, 1972, the maximum compensation to be considered in determining an individual's "average compensation" would be seven thousand five hundred dollars (\$7,500) if paid prior to October 13, 1967.

CONCLUSION

It is our opinion that an individual who is presently retired and receiving retirement benefits which were calculated by multiplying one percent of his average pay (not to exceed \$7,500 per year) during the five consecutive years of work when his pay was the greatest, times his years of creditable service, is not entitled to receive additional compensation under House Bill No. 1178, Second Regular Session, 76th General Assembly as a result of the change in the definition of average compensation in October of 1967.

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

Yours very truly,



JOHN C. DANFORTH
Attorney General