

PENSIONS: 1. Juvenile officers who are paid in  
RETIREMENT: whole or in part out of state appropri-  
JUVENILE OFFICERS: ations are entitled to membership and  
STATE RETIREMENT SYSTEM: prior membership credit in the Missouri  
State Employees' Retirement System. Dep-  
uty juvenile officers are not entitled to membership or prior mem-  
bership credit in the Missouri State Employees' Retirement System.  
2. Such juvenile officers are entitled to membership in the Mis-  
souri State Employees' Retirement System on the full amount of  
their salaries.

OPINION NO. 281

October 31, 1974

Honorable Harold L. Volkmer  
Representative, District 13  
120 North Third  
Hannibal, Missouri 63401



Dear Representative Volkmer:

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

- "1. In view of the case of Hawkins vs. Mis-  
souri State Employees Retirement System,  
487 S. W. 2nd 580 (Missouri Court of Ap-  
peals - 1973) which related to whether  
or not a court reporter was entitled to  
membership and prior membership credit  
in the Missouri State Retirement system  
and said court reporter being at that  
time paid partly by the State and partly  
by the County, are juvenile officers and  
deputy juvenile officers of the State of  
Missouri who are paid partly by the State  
from specific appropriations for that  
purpose and partly by the Counties, now  
members of the Missouri State Employees  
Retirement System?
- "2. If your answer to the first question is  
in the affirmative, are said employees  
entitled to prior service credit, and to  
what extent?

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- "3. Must any contributions be made to the system by these juvenile officers and deputy juvenile officers.
- "4. You have said juvenile officers and deputy juvenile officers are members of the Missouri State Employees Retirement System, are they entitled to credit for the full amount of salary paid to them from all sources?"

This opinion is applicable only to juvenile officers and deputy juvenile officers who are presently employed as juvenile officers and deputy juvenile officers and who did not retire before January 8, 1973.

We will first consider your first two questions in regard to whether or not juvenile officers and deputy juvenile officers are eligible for membership or prior membership credit as a result of the case Hawkins v. Missouri State Employees' Retirement System, 487 S.W.2d 580 (Mo.Ct.App. at K.C. 1972), which became final on January 8, 1973. The Hawkins case dealt with the questions as to whether or not a court reporter was entitled to membership and prior membership credit in the retirement system. In this regard, Section 485.060, RSMo 1969, provides that a court reporter shall receive an annual salary of \$12,000 per year. Section 485.065, RSMo 1969, provides that salary \$5,500 is to be paid out of the state treasury. In reaching its decision, the court determined whether or not an individual court reporter came within the definitions of "employee" and "department" as those terms are defined in subsections (11) and (15) of Section 104.310, RSMo 1969:

"(11) 'Department', any department, institution, board, commission, officer, court or any agency of the state government receiving state appropriations including allocated funds from the federal government and having power to certify payrolls authorizing payments of salary or wages against appropriations made by the federal government or the state legislature from any state fund, or against trusts or allocated funds held by the state treasurer;

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"(15) 'Employee', any elective or appointive officer or employee of the state who is employed by a department and earns a salary or wage in a position normally requiring the actual performance by him of duties during not less than one thousand five hundred hours per year, including each member of the general assembly, but not including any employee who is covered under some other retirement or benefit fund to which the state is a contributor; except this definition shall not exclude any employee as defined herein who is covered only under the Federal Old Age and Survivors' Insurance Act, as amended. As used in sections 104.310 to 104.550, the term 'employee' shall include civilian employees of the Army National Guard or Air National Guard of this state who are employed pursuant to section 709 of title 32 of the United States Code and paid from federal appropriated funds;"

The Kansas City Court of Appeals concluded that a court reporter was entitled to membership and prior membership credit in the Missouri State Employees' Retirement System. The reasoning of the court was that a court reporter was "an employee" of the state as defined in subsection (15) of Section 104.310, RSMo 1969, and was employed by "a department" which received state appropriations as defined in subsection (11) of Section 104.310, RSMo 1969.

Subsection 1 of Section 211.351, RSMo 1969, provides that the juvenile court shall appoint a juvenile officer and other necessary juvenile court personnel to serve under the direction of the court in each county of the first and second class. In addition, it is provided that the circuit judge in circuits comprised of third and fourth class counties may appoint a juvenile officer and other necessary personnel to serve the judicial circuit, or circuit judges of any two or more adjoining circuits may by agreement, confirmed by judicial order, appoint a juvenile officer and other necessary personnel to serve their respective judicial circuits. Section 211.381, RSMo Supp. 1973, provides for the compensation of juvenile court personnel in each county of the first class and the City of St. Louis. Section 211.391, RSMo Supp. 1973, provides for the compensation of juvenile court personnel in counties of the second class and in those judicial circuits containing a county of the second class. Section 211.392, RSMo Supp. 1973, provides for the compensation of juvenile

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court personnel in those judicial circuits comprised of counties of the third and fourth class. Lastly, Section 211.393, RSMo Supp. 1973, reads as follows:

"1. The salaries and expenses of all juvenile court personnel in the circuit composed of a single county of the first or second class and in the city of St. Louis are payable monthly out of county or city funds, as the case may be, except that one-half of the salary of the juvenile officer of any such circuit in which he is engaged full time is payable monthly by the state of Missouri, but not to exceed the sum of seven thousand eight hundred dollars annually. The payment by the state of Missouri shall be made to either the juvenile officer, or to the county or the city of St. Louis.

"2. In circuits composed only of counties of the third and fourth class, and in circuits containing two or more counties, one of which is a second class county, the salaries and expenses are payable out of the county funds and prorated among the several counties served upon a ratio determined by a comparison of the respective populations of the counties involved, except that one-half of the salary of the juvenile officer of any such circuit in which he is engaged full time is payable monthly by the state of Missouri, but not to exceed the sum of five thousand nine hundred dollars annually."

It should also be noted that the following appropriations for court reporters is found in Laws of Missouri 1972 at page 24:

"Section 4.290. To the Comptroller  
For Personal Service and expenses  
of court reporters of circuit  
courts and courts of criminal  
corrections  
Personal Service and Expenses  
From General Revenue. . . . \$592,500"

Similarly, the following appropriation for juvenile officers is found in Laws of Missouri 1972 at page 24:

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"Section 4.300. To the Comptroller  
For the compensation of juvenile  
officers  
Personal Service  
From General Revenue. . . . \$194,000"

As a result of the foregoing statutory provisions, it is our view that the situation of juvenile officers is essentially the same as that of court reporters. The reasoning of the Kansas City Court of Appeals in the Hawkins case, therefore, applies; and a juvenile officer is considered to be an "employee" of the state as defined in subsection (15) of Section 104.310, RSMo 1969, and is employed by a "department" which receives state appropriations as defined in subsection (11) of Section 104.310, RSMo 1969. We therefore conclude that a juvenile officer is entitled to membership and prior membership credit in the Missouri State Employees' Retirement System. However, it is our view that the situation as to deputy juvenile officers is different from that of court reporters. The reason being that Section 211.393 does not provide that these individuals are to be paid by the state. In addition, the above appropriation indicates that only juvenile officers receive state appropriations, and not deputy juvenile officers. We therefore conclude that deputy juvenile officers are not entitled to membership and prior membership credit in the Missouri State Employees' Retirement System.

We next consider your fourth question which reads as follows:

"4. You have said juvenile officers and deputy juvenile officers are members of the Missouri State Employees Retirement System, are they entitled to credit for the full amount of salary paid to them from all sources?"

The above issue was also considered by the Kansas City Court of Appeals in the Hawkins case involving court reporters. In this regard, the definition of "compensation" in subsection (9) of Section 104.310, RSMo Supp. 1973, reads as follows:

"(9) 'Compensation', all salary and wages payable out of any state, federal, trust, or other funds to an employee for personal services performed for the state, except amounts received as salary or wages payable in lieu of annual leave and sick leave after date of retirement;"

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In construing the above-statutory definition, the Court of Appeals determined that the matter of services for the state was the important factor and that the source from which the employee was paid should not be deemed controlling. Therefore, it was the opinion of the Court of Appeals that the definition was clear and unambiguous so as to require all of the court reporters' compensation to be considered for the purpose of computing retirement, even though part of their salary was paid out of state funds and another part was paid out of county funds. It is submitted that similar reasoning is applicable to juvenile officers. Consequently, we conclude that juvenile officers and not deputy juvenile officers are entitled to membership in the Missouri State Employees' Retirement System on the full amount of their statutory salary, whether paid out of state or county funds.

We next consider your third question in regard to whether or not any contributions are required to be made to the Retirement System by juvenile officers. We must decline to render an opinion on this issue at this time for the reason that we consider this to be a question to be decided by the Board of Trustees of the Missouri State Employees' Retirement System, and since this office is required by Section 104.520, RSMo 1969, to furnish legal services upon request to the Retirement System, we may be involved in litigation concerning this question.

#### CONCLUSION

It is the opinion of this office that:

1. Juvenile officers who are paid in whole or in part out of state appropriations are entitled to membership and prior membership credit in the Missouri State Employees' Retirement System. Deputy juvenile officers are not entitled to membership or prior membership credit in the Missouri State Employees' Retirement System.
2. Such juvenile officers are entitled to membership in the Missouri State Employees' Retirement System on the full amount of their salaries.

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

Yours very truly,



JOHN C. DANFORTH  
Attorney General