

STATE EMPLOYEES' RETIREMENT SYSTEM:
LEGISLATORS:

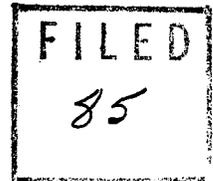
A member of the General
Assembly is a member of
the Missouri State Employees'

Retirement System pursuant to the provisions of Sections 104.310(25)
and 104.330.1, RSMo Supp. 1982. As such, a member of the General
Assembly may serve as an elected member of the board of trustees of
the Missouri State Employees' Retirement System pursuant to Section
104.450, RSMo 1978.

November 15, 1982

OPINION NO. 85

The Honorable Don Randall
Representative, District 8
4011 Pickett Road
St. Joseph, Missouri 64503



Dear Representative Randall:

This is in response to your recent request for our opinion on
the following question:

May a member of the general assembly serve as
an elected member of the board of trustees of
the Missouri State Employees' Retirement System,
rather than as an appointed member?

Section 104.450, RSMo 1978, which pertains to the Missouri
State Employees' Retirement System, provides in pertinent part:

The board of trustees shall consist of
the state treasurer, the commissioner of ad-
ministration, the director of the personnel
division, one member of the senate appointed
by the president pro tem of the senate, one
member of the house of representatives ap-
pointed by the speaker of the house, and two
members who shall be members of the system
and shall be appointed by the governor for
four-year terms during the governor's term
of office, two members who shall be members
of the system and shall be elected by a plu-
rality vote of the members of the system for
four-year terms to commence January 1, 1975,
and every four years thereafter. . . .

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This statute requires only that the two elected members of the board of trustees be "members of the system."

Section 104.310, RSMo Supp. 1982, defines "member," as:

(25) "Member", a member of the Missouri state employees' retirement system, without regard to whether or not the member has been retired;

The statutory definition of member does not distinguish between members of the retirement system upon any basis.

Section 104.330.1, RSMo Supp. 1982, establishes the membership of the retirement system, as follows:

As an incident to his contract of employment or continued employment, each employee of the state shall become a member of the system on the first day of the first month following the original effective date of sections 104.310 to 104.540, September 1, 1957, and every person thereafter becoming an employee shall become a member at the time of employment. Each employee's membership shall continue as long as the member continues to be an employee or be on leave for military service or training as hereinafter provided; or receive or be eligible to receive an annuity or benefit.

This statute requires that each employee of the state become a member of the retirement system.

The word "employee" is defined in Section 104.310(20)(a), RSMo Supp. 1982, as:

(20) "Employee":

(a) 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, . . . [Emphasis added.]

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This definition specifically states that each member of the General Assembly is an employee. As state employees for purposes of retirement system law, members of the General Assembly are members of the retirement system under Section 104.330.1, RSMo Supp. 1982, and in the absence of an express disqualification, are eligible to serve as elected members of the board of trustees of the Missouri State Employees' Retirement System.

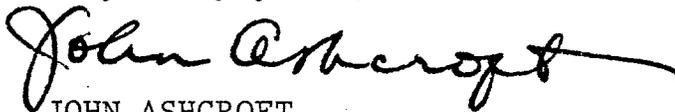
Because your question is somewhat ambiguous, it is necessary to clarify our answer. We believe that if a member of the General Assembly is elected by the members of the Missouri State Employees' Retirement System, he or she serves in addition to the members of the General Assembly appointed pursuant to Section 104.450. Clearly, a member of the General Assembly elected by the members of the system represents system members and not the General Assembly on the board of trustees.

CONCLUSION

It is the opinion of this office that a member of the General Assembly is a member of the Missouri State Employees' Retirement System pursuant to the provisions of Sections 104.310(25) and 104.330.1, RSMo Supp. 1982. As such, a member of the General Assembly may serve as an elected member of the board of trustees of the Missouri State Employees' Retirement System pursuant to Section 104.450, RSMo 1978.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Patricia D. Perkins.

Very truly yours,



JOHN ASHCROFT
Attorney General