

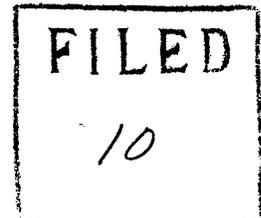
STATE EMPLOYEES' RETIREMENT SYSTEM:

Members of the Missouri State Employees' Retirement System who are retired and receiving benefits may be employed by a department, other than the General Assembly, on a part-time basis, i.e., less than fifteen hundred hours per year, and continue to receive retirement benefits.

April 27, 1984

OPINION NO. 10-84
(Amended)

Mary-Jean Hackwood
Executive Secretary
Missouri State Employees'
Retirement System
Post Office Box 209
Jefferson City, Missouri 65101



Dear Ms. Hackwood:

This opinion is issued in response to your question asking:

Can a member of the Missouri State Employees' Retirement System, who is entitled to receive benefits or who is receiving benefits, be employed on a part-time basis, but less than 1500 hours and continue to receive MOSERS benefits while on work status?

If so, what effect does RSMo 104.380 have?

What effect does RSMo 104.380(2) [sic] have and more specifically, does it prohibit the employment?

We assume for purposes of this opinion that the employment referred to in your question is employment with a "department", as that word is defined in Section 104.310(15), RSMo Supp. 1983.^{1/} The employed person is a retired member of the Missouri

1/

All statutory references are to RSMo Supp. 1983, unless otherwise indicated.

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State Employees' Retirement System, but is not an "employee", as that word is defined in Section 104.310(20)(a), because the employed person is working less than 1500 hours per year.^{2/}

Section 104.310(20)(a) defines the term "employee", in pertinent part, as:

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 currently accumulating benefits under some other retirement or benefit fund to which the state is a contributor; . . .^{3/}

Section 104.380.2 provides:

If a retired member is elected to any state office or is appointed to any state office or is reemployed by a department, the member shall not receive an annuity for any month or part of a month for which the member serves as an officer or employee, but the member shall be considered to be a new employee with no previous creditable service and must accrue creditable service of two or more years after reemployment in order to receive any additional annuity. Any reemployed retired member who has two or more years of creditable service after reemployment and later retires shall receive an additional amount of monthly annuity calculated to include only the creditable service and the average compensation earned by the member

2/

The definition of "employee" at Section 104.310(20)(b) includes certain legislative employees who need not work 1500 hours per year. We assume that such legislative employees are not involved here.

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Section 104.310(21)(a) of House Bill No. 1370 of the Second Session of the Eighty-Second General Assembly, effective October 1, 1984, reduces the hourly requirement to 1000 hours. See also Section 104.310(21)(b) with respect to legislative employees.

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since reemployment. In either event, the original annuity and the additional annuity, if any, shall be paid commencing with the end of the first month after the month during which the member's term of office has been completed, or the member's employment terminated.^{4/}

Section 104.380.2 refers to a retired member who is reemployed by a department, and who is an "employee". This statute allows such employee to receive an additional annuity after accruing two or more years of creditable service after reemployment and then retiring. As we have noted, however, a person who is employed less than fifteen hundred hours is not by definition an "employee". It follows, in our view, that the prohibition of Section 104.380.2 respecting the receipt of an annuity "for any month or part of a month for which the member serves as an . . . employee" is not applicable to nonlegislative part-time employees.

CONCLUSION

It is the opinion of this office that members of the Missouri State Employees Retirement System who are retired and receiving benefits may be reemployed by a department, other than the General Assembly, on a part-time basis, i.e., less than fifteen hundred hours per year, and continue to receive retirement benefits.

Very truly yours,



JOHN ASHCROFT
Attorney General

4/

Section 104.380.2 of House Bill No. 1370 of the Second Session of the Eighty-Second General Assembly, effective October 1, 1984, reduces the period of creditable service required to qualify for the additional annuity from two years to one year.