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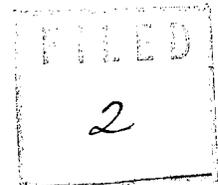
February 1, 1985

(314) 751-3321

DIRECT DIAL:

OPINION LETTER NO. 2-85

Mary-Jean Hackwood
Executive Secretary
Missouri State Employees' Retirement System
900 Leslie Boulevard
Jefferson City, Missouri 65101



Dear Ms. Hackwood:

This opinion letter is in response to your questions asking:

Does the benefit increase from 1 1/4% to 1 1/3% apply to the initial retirement benefit of retirees or is it to include any cost of living increases that have been received by the retirees?

If your determination is that the increase is to be applied to the initial benefit amount, rather than the amount currently being received by a retiree, should the cost of living increase by Section[s] 104.415 and 104.612 be recalculated retroactively on the initial benefit payment and brought up to date or should the cost of living increases accrued to date be paid until such time the next cost of living adjustment is made?

Section 104.612.1 and .2, RSMo Supp. 1984, states:

1. Each special consultant employed or eligible for employment on May 12, 1981, by a board of trustees of a retirement system as provided in section 104.610 shall, in addition to duties prescribed in section 104.610, and upon request of the board of trustees, give the board, orally or in writing, a short detailed

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statement on the problems of retirement under the current monthly benefits.

2. As compensation for the extra duty imposed by subsection 1 of this section, each special consultant shall receive, in addition to all other compensation provided by law, an increase in compensation each year, computed upon the total amount which the consultant received in the previous year from state retirement benefits, compensation under the provisions of section 104.610, and compensation under the provisions of this section, of eighty percent of the increase in the consumer price index calculated in the manner specified in section 104.415. Any such annual increase in compensation, however, shall not exceed five percent, nor be less than four percent, and the total increase in compensation to each special consultant pursuant to the provisions of this subsection shall not exceed fifty percent of the total retirement benefits and compensation he or she was receiving immediately prior to May 12, 1981.

Section 104.415, RSMo Supp. 1984, states:

1. Each member who retires on or after May 12, 1981, shall receive each year an increase in the amount of benefits received by the member during the preceding year of eighty percent of the increase in the consumer price index calculated in the manner hereinafter provided. Such annual benefit increase, however, shall not exceed five percent, nor be less than four percent, and the total increase in the amount of benefits received pursuant to the provisions of this subsection shall not exceed fifty percent of the initial benefit which the member received upon retirement.

2. For the purposes of this section, any increase in the consumer price index shall be determined by the board in February of each year, based upon the consumer price index for the preceding calendar year over the consumer price index for the calendar year immediately prior thereto. Any increase so determined shall

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be applied by the board in calculating any benefit increases that become payable under this section for the twelve-month period beginning with the March first immediately following such determination.

3. An annual increase, if any is due, shall be payable monthly beginning on a date specified by the board. Nothing in this section shall be construed to prohibit a member from waiving his right to receive the annual increase provided pursuant to this section. However, the waiver may not extend beyond the age permitted by the Tax Equity and Fiscal Responsibility Act (TEFRA). The waiver shall be final as to the annual increase waived.

As can be seen by these statutes, members of the Missouri State Employees' Retirement System ("MOSERS") who retire on or after May 12, 1981, receive a cost of living allowance ("COLA") as a part of their basic retirement benefits. Members of MOSERS who retired prior to May 12, 1981, receive the COLA as a part of their special consultant pay. Both COLAs are calculated in the same manner and are based on the amount received in the previous year from state retirement benefits.

Section 104.610.1, RSMo Supp. 1984, states:

Any person, who is receiving or hereafter may receive state retirement benefits from the Missouri state employees' retirement system, a legislators' retirement system, or the highway employees' and highway patrol retirement system, upon application to the board of trustees of the system from which he or she 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 the person's 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 received initially on his retirement, shall be equal to

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the state retirement benefits the person would be receiving currently if he had benefited from changes in the law effecting increases in the rate in the formula for calculating benefits in his respective retirement system, for his type of employment, made subsequent to the date of his retirement; except that in calculating such benefits the meaning of "average compensation" shall be that ascribed to it by the law in effect on December 31, 1980. [Emphasis added.]

Such section provides retirees with special consultant pay in an amount equal to the state retirement benefits that person would be receiving currently if he or she had benefited from changes in the law effecting increases in the rate in the formula for calculating benefits in his respective retirement system.

Section 104.374.1, RSMo Supp. 1984, states:

The normal annuity of a member, other than a member of the general assembly or a member who served in an elective state office, shall be an amount equal to one and one-third percent of the average compensation of the member multiplied by the number of years of creditable service of the member.

Prior to the enactment of Senate Committee Substitute for House Committee Substitute for House Bill No. 1370, 82nd General Assembly, Second Regular Session, the rate used to calculate the deferred normal annuity was one and one-fourth percent rather than one and one-third percent.

The calculation of the deferred normal annuity is dependent upon the "rate", the average compensation of the individual, and the number of years of creditable service. We believe that the special consultant compensation under the new version of Section 104.610 is calculated by merely substituting the "old rate" for the new one and one-third percent (1-1/3%) rate introduced by Section 104.374, RSMo Supp. 1984. One does not multiply the new one and one-third percent (1-1/3%) rate by any amount of accrued cost-of-living benefits. Such cost-of-living benefits are calculated separately under Sections 104.415 and 104.612, RSMo Supp. 1984.

Accordingly, we conclude that the rate increase from one and one-fourth percent (1-1/4%) to one and one-third percent (1-1/3%) is applied to the calculation of the special consultant compensation provided by Section 104.610, RSMo Supp. 1984, without regard

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to cost-of-living benefit adjustments. Cost-of-living benefit adjustments are calculated annually under Sections 104.415 and 104.612, RSMo Supp. 1984. Such cost-of-living benefit adjustments are not calculated retroactively.

Very truly yours,

A handwritten signature in cursive script, appearing to read "William L. Webster", with a long horizontal flourish extending to the right.

WILLIAM L. WEBSTER
Attorney General