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DIRECT DIAL:

OPINION LETTER NO. 3-85

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



Dear Ms. Hackwood:

This letter is in response to your question asking whether the minimum benefit adjustment under Section 104.615, RSMo Supp. 1984, is special consultant pay or part of the base benefit.

Section 104.615.1, RSMo Supp. 1984, states:

Notwithstanding provisions of other sections of this chapter to the contrary, but subject to the provisions of subsection 2 of this section, the total monthly benefit payable, before any actuarial adjustments or payments of any consultant compensation, to a member of the state employees' retirement system or a member of the highways and transportation employees and highway patrol retirement system shall not be less than one hundred twelve dollars and fifty cents if such member has fifteen years or more of creditable service in his or her respective system; if such member has ten or more but less than fifteen years of creditable service in his or her respective system, the total monthly payment shall not be less than one hundred twelve dollars and fifty cents reduced by one-fifteenth for each year, or portion of a year, the member lacks having fifteen years of creditable service. Special consultants shall give an oral summary of opinions on aging, if so requested, as an extra duty for which additional compensation shall be paid as provided in this

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section. Any additional compensation payable to any member under the provisions of this section shall be consolidated with any other retirement benefits payable to such person and shall be paid from the general revenue fund of the state of Missouri, or any fund or funds, or from a combination or part of any fund or funds of the state of Missouri, pursuant to appropriations for such purpose. [Emphasis added.]

Section 104.615, RSMo Supp. 1983 (repealed by House Bill No. 1370, 82nd General Assembly, Second Regular Session), provided:

The provisions of sections 104.374 to the contrary notwithstanding, [the total annuity of] any member of the state employees' retirement system, other than members and former members of the general assembly, and any member of the highway employees' and highway patrol retirement system, if such member of either system has fifteen years or more of creditable service; including compensation received for services as special consultant, shall not be less than one hundred twelve dollars and fifty cents per month, reduced by one-fifteenth for each year of creditable service for those retirees with ten years or more and less than fifteen years of creditable service. For purposes of benefits under the provisions of this section, "members" shall be considered and include special consultants¹ as provided in this chapter 104. Special consultants shall give an oral summary of opinions on aging if so requested as an extra duty for which additional compensation shall be paid as provided in this section. Any additional annuity of or compensation payable to any member under the provisions of this section shall be consolidated with any other retirement benefits payable to such person and shall be paid from the general revenue fund of the state of Missouri, or any fund or funds, or from a combination or part of any fund or funds

¹This provision of Section 104.615, H.C.S.H.B. Nos. 835, 53, 591 and 830, 81st General Assembly, 1981, is identical to that contained in the section in 1979, S.B. 242, although there was an attempt to amend the language, without success, to omit the word "and" and submit in lieu thereof the word "to".

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of the state of Missouri, pursuant to appropriations for such purpose. [Emphasis added and revisor's note omitted.]

Prior to the enactment of the minimum benefit provision of S.B. 242, 1979 Mo. Laws 297, state retirees were not entitled to a minimum monthly benefit. In order to provide this minimum monthly benefit to state retirees who had retired prior to the enactment of S.B. 242, the minimum monthly benefit adjustment was made special consultant pay. See State ex rel. Dreer v. Public School Retirement System of the City St. Louis, 519 S.W.2d 290 (Mo. 1975); State ex rel. Cleveland v. Bond, 518 S.W.2d 649 (Mo. 1975); State ex rel. Breshears v. Missouri State Employees' Retirement System, 362 S.W.2d 591 (Mo. banc 1962).

The first sentence of the new version of Section 104.615 indicates that the one hundred twelve dollars and fifty cents (\$112.50) per month minimum monthly benefit is calculated "before any actuarial adjustments or payments of any consultant compensation, . . .". The plain meaning of these words is that the minimum monthly benefit is the base benefit before adding on any adjustments for consultant compensation. This implies that the minimum monthly benefit is the base benefit. However, the second sentence of the new version of Section 104.615 refers to special consultants who must give an oral summary of opinions on aging in order to be entitled to the additional compensation provided by Section 104.615, RSMo Supp. 1984. This indicates that some persons are receiving a minimum monthly benefit adjustment as consultant pay.

As we read Section 104.615, RSMo Supp. 1984, those members of the Missouri State Employees' Retirement System who retire on or after the effective date of Section 104.615, RSMo Supp. 1984, i.e., October 1, 1984, receive the minimum monthly benefit adjustment as a base benefit, if applicable. Those state retirees who retired prior to the October 1, 1984 effective date of Section 104.615, RSMo Supp. 1984, may continue to receive the minimum monthly benefit adjustment as special consultant pay.

Yours very truly,



WILLIAM L. WEBSTER
Attorney General