

FILE

Subject

*Pensions - Public  
Employee Coverage Generally*

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STATE OF KANSAS

*Office of the Attorney General*

State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

VERN MILLER  
Attorney General

February 15, 1974

Opinion No. 74-56

Honorable Fletcher Bell  
Secretary  
Kansas Judges Retirement Board  
State Office Building  
Topeka, Kansas 66612

Dear Mr. Bell:

You state that Mr. Glen M. Fowler, an official court reporter, was declared disabled by the Kansas Supreme Court and placed on a disability annuity effective September 1, 1963. His annuity was calculated, under then existing law, and amounted to \$379.16 per month. His disability was such that he was not eligible for benefits under federal old-age, survivors and disability insurance during the time prior to August, 1973. Accordingly, no off-set for federal social security was ever made from 1963 - 1973. His annuity under the Retirement System For District Court Reporters increased effective July of 1972 to \$398.12 per month.

K.S.A. Supp. 20-2709 pertains to disability annuities. It was amended by the 1972 Legislature by the addition of the following language:

"Any official court reporter receiving an annuity under the provisions of this section shall be considered an active official court reporter for the purposes of K.S.A. 20-2708, and shall, upon first becoming eligible for retirement thereunder, have his retirement under this section terminated and be placed on retirement under the provisions of K.S.A. 20-2708."

On August 20, 1973, Mr. Fowler became 65 years of age. Pursuant to the 1972 amendment above, his disability benefit was converted to a normal retirement benefit under the System. At the same time he became eligible for \$260.90 per month in Social Security benefits.

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The question arises whether the Retirement System annuity should be reduced in light of the commencement of social security benefits not previously available to him.

K.S.A. 20-2708 provides in pertinent part as follows:

"Any official court reporter may retire upon reaching the age of sixty-five (65) and upon making application to the board, and upon retiring each such official court reporter shall receive retirement annuities as provided in section 10 [20-2710] of this act:"

K.S.A. Supp. 20-2710 provides for the computation of benefits. It provides in pertinent part that

"the amount provided hereunder shall be supplemental to any primary benefits to which such official court reporter shall be entitled under the Kansas and federal old-age, survivors and disability insurance acts, upon timely application therefor, and the initial monthly combined benefits thereunder and hereunder, calculated without regard to any reduction in benefit because of the earned income provisions thereunder, as of the date of his retirement shall not exceed sixty-five percent (65%) of the monthly salary such official court reporter was receiving when he last served as an official court reporter." [Emphasis supplied.]


A substantially similar provision has existed in the act since its passage in 1955. Increases in social security benefits subsequent to the date of retirement under K.S.A. 20-2708 are not included as an off-set to Retirement System annuities.

" . . . Said sixty-five percent (65%) limitation shall not apply with respect to any increase in said old-age, survivors and disability insurance taking effect after the date of such reporter's retirement under K.S.A. 20-2708."

In light of the foregoing we are compelled to conclude that the computation of benefits must consider social security benefits to which Mr. Fowler became entitled on August 20, 1973.

We are hopeful that the foregoing will be of assistance.

Yours very truly,

  
VERN MILLER  
Attorney General

VM:DRH:jsm