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STATE OF KANSAS

Office of the Attorney General

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VERN MILLER
Attorney General

November 11, 1974

Opinion No. 74-359

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

Dear Mr. Bell:

You inquire whether the provisions of Senate Bill 938 (Chapter 142 L. 74) will in some instances result in a reduction of retirement benefits paid to retired judges. You state:

"Such a situation could conceivably arise when a judge has been retired due to a disability pursuant to K.S.A. 20-2609 and then his retirement redetermined upon his reaching the age of sixty-two years pursuant to K.S.A. 20-2608 as amended by Senate Bill 938. Further, it would appear that Senate Bill 938 eliminates the possibility of a judge sixty-two years of age or older being declared disabled and drawing the disability retirement pursuant to K.S.A. 20-2609."

Senate Bill 938 provides in pertinent part:

"(b) Notwithstanding the provisions of subsection (a) of this section, any judge who is otherwise eligible to retire may retire upon reaching age sixty-two (62) and upon making application to the board, but any such judge who shall retire prior to attaining the age of sixty-five (65) shall receive an actuarially reduced retirement annuity, pursuant to K.S.A. 1973 Supp. 20-2610, and any amendments thereto, based upon the normal retirement age of sixty-five (65)."
[Emphasis supplied.]

As to the first situation wherein a question arises, K.S.A. 20-2609 provides in pertinent part:

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"Any judge receiving an annuity under the provisions of this section shall be considered an active judge for the purposes of K.S.A. 20-2608 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. 20-2608." [Emphasis supplied.]

The minutes of the Senate committee on Judiciary indicate that Senate Bill 938 was intended to make the judge's retirement system comparable to the Kansas Public Employees Retirement System (KPERs).

In that system, an employee's "normal retirement age" is sixty-five. An employee is given the option of retiring at age sixty, but he will receive an actuarially reduced retirement annuity. If a public employee is receiving a retirement annuity under the permanent disability statute, the retirement annuity is recomputed at age sixty-five, wherein the employee receives full retirement benefits. However, the employee can request a recomputation upon reaching sixty wherein he receives an actuarially reduced retirement annuity.

We construe "first becoming eligible for retirement" to mean first becoming eligible for retirement with full benefits. Subsection (b) of Senate Bill 938 thus provides an option for the judge. If he specifically requests that his retirement annuity be recomputed on reaching age sixty-two, this can be done but he will receive an actuarially reduced retirement annuity. Otherwise, recomputation will be done at the "normal retirement age of sixty-five."

The second situation wherein a question arises concerns another part of K.S.A. 20-2609, which in pertinent part provides:

"Any judge who has become permanently physically or mentally disabled and *who is not entitled to retire under K.S.A. 20-2608* may, upon being found so disabled by the supreme court, retire, and upon such retirement he shall be entitled to receive an annuity." [Emphasis supplied.]

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We construe "who is not entitled to retire under K.S.A. 20-2608" to mean who is not entitled to retire with full benefits under K.S.A. 20-2608. Therefore, a judge is eligible to receive retirement annuity under 20-2609 until he reaches sixty-five.

It is our opinion that retirement paid to retired judges will not decrease under Senate Bill 938.

Yours very truly,



VERN MILLER
Attorney General

VM:DRH:tp