

STATE OF KANSAS

Office of the Attorney General

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

CURT T. SCHNEIDER
Attorney General

February 17, 1975

Opinion No. 75- 67

Mr. John K. Corkhill
Executive Secretary
Kansas Public Employees Retirement System
400 First National Bank Tower
One Townsite Plaza
Topeka, Kansas 66603

Dear Mr. Corkhill:

You inquire whether elected officials who are already members of the Kansas Public Employees Retirement System on the date of their election to public office may at that time elect to discontinue participation in the Kansas Public Employees Retirement System. The general provisions relating to membership in the System are found at K.S.A. 74-4911 and K.S.A. 1974 Supp. 74-4992. The applicable portion of the former statute provides:

"(3) Any employee who is an elected official and is eligible to join the system shall elect to become or not to become a member of the system within thirty (30) days after the entry date or the first day of the month coinciding with or following one (1) year of service, whichever is later. In the event that such elected official fails to file, within the time hereinbefore prescribed, the election to become a member of the retirement system, it shall be presumed that he has elected not to become a member."

The latter statute provides thus:

"Any such elected state officer or former state officer as described in section 1 [K.S.A. 1974 Supp. 74-4991] who is eligible

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to join the system shall become a member on entry date or upon taking the oath of office of the position to which he is elected if such election occurs after entry date and upon filing with the board within thirty (30) days after entry date or upon taking such oath, an election to become or not to become a member of the system. In the event that any such elected state officer or former elected state officer fails to file the election to become a member of the retirement system within the time specified in this section, it shall be presumed that he has elected not to become a member."


We find no reported judicial decision interpreting these provisions. Clearly, the express language of the cited sections extends to those elected officials who are "eligible to join the system" an opportunity to elect whether to participate and "become a member." With equal clarity, in our opinion, the cited provisions do not extend to those persons who are already members of the Kansas Public Employees Retirement System on the date of their election to public office an election to withdraw from the retirement system. The cited sections are completely inapplicable to persons who upon election to public office are already members of the retirement system. These provisions concern only those persons who at their time of election to office are not members of the retirement system but are eligible to become members. To those persons, these provisions afford an opportunity to elect to participate or not to participate. These provisions provide no basis upon which a person who is not merely "eligible to join the system," but who is already a participating member thereof may withdraw upon election to public office.

You indicate that some elected officials who were members of the retirement system at the time of their election to office may have previously filed elections not to become members under the belief that the filing of such an election would remove them from participation in the retirement system during their term of office. It is our opinion that such elections are without legal force and are void. If such circumstances are discovered by the system, or come to the attention of the system, the records should be corrected to reflect continuing membership in the retirement system at the time

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of taking office and the appropriate procedures regarding employer and employee contributions for such periods should be initiated by the retirement system.

Yours very truly,


CURT T. SCHNEIDER
Attorney General

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