



STATE OF KANSAS

Office of the Attorney General

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

CURT T. SCHNEIDER
Attorney General

August 12, 1975

ATTORNEY GENERAL OPINION NO. 75- 332

Mr. Earl H. Hatcher
Disciplinary Administrator
State Board of Law Examiners
Room 427 S, State Capitol
Topeka, Kansas 66612

Re: Retirement--Judges--Other Compensation

Synopsis: Compensation for the office of Disciplinary Administrator is paid "by the state of Kansas," within the meaning of ch. 190, § 9(c), L. 1975, and must be considered in determining eligibility for continued annuity payments thereunder.

* * *

Dear Commissioner Hatcher:

Section 9(c), ch. 190, L. 1975, provides in pertinent part thus:

"Except as otherwise provided in this subsection, if a person, who has retired as a judge and is receiving a monthly annuity of more than one hundred dollars (\$100) under this act or the acts of which this act is amendatory, should be employed, elected or appointed in or to any position or office for which compensation for service in excess of two thousand four hundred dollars (\$2,400) per annum is paid by the state of Kansas . . . or any instrumentality . . . [thereof], such person shall not receive any such annuity for any month for which he serves in such position or office."

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You advise that you are receiving a monthly annuity from the Supreme Court Retirement Fund in excess of \$100, and compensation as Disciplinary Administrator in excess of \$2,400. You inquire whether you are eligible to continue to receive the monthly annuity so long as you continue to receive this compensation as Disciplinary Administrator.

The position of Disciplinary Administrator was created by Rule 203, approved by the Supreme Court on May 4, 1973, and now found at K.S.A. 1974 Supp. 7-124. Subsection (a) thereof states thus:

"There is hereby created the office of disciplinary administrator. The administrator shall be appointed by the court and shall serve at the pleasure of the court."

The duties of the position are prescribed by this rule, to be performed subject to direction and approval of the State Board of Law Examiners. The compensation for the position is payable, I understand, from the bar discipline fee fund, pursuant to K.S.A. 20-1a01, which states thus in pertinent part:

"The clerk of the supreme court shall remit to the state treasurer at least monthly all moneys received by or for him from fees, costs, other charges or penalties of the state board of law examiners from bar discipline program administration and activities. Upon receipt of each such remittance the state treasurer shall deposit the entire amount thereof in a special fund to be known as the bar discipline fee fund, which shall not be a part of the state treasury. All expenditures from such fund shall be made upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the chief justice of the supreme court or by a person or persons designated by him. Amounts deposited under this section shall not be subject to any limitation imposed by any appropriation act by the legislature."

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In addition to "fees, costs, other charges or penalties of the state board of law examiners from bar discipline program administration and activities" received by or for the clerk and required by K.S.A. 20-1a01 to be deposited in the bar disciplinary fee fund, Rule 201 of the Supreme Court, approved May 4, 1973, requires that annual registration fees assessed thereunder to be deposited by the clerk in the bar disciplinary fee fund. Subparagraph (h) of that rule states in part thus:

"Disbursements from such fund shall be made only to defray the cost and expense of administering the registration procedure established hereunder and the disciplinary procedures carried on pursuant to the rules of this court."

The bar disciplinary fund is expressly provided not to be a part of the state treasury. The question arises whether, if the fund from which your compensation as Disciplinary Administrator is paid is not a part of the state treasury, whether your compensation for those services are "paid by the state of Kansas . . . or any instrumentality . . . [thereof.]" The apparent purpose of section 9(c), ch. 190, L. 1975, is to restrict the payment of annuities under that act to persons employed, elected or appointed in or to any position or office for which compensation in excess of \$2,400 is paid from public funds by the state or any instrumentality thereof. The proceeds of the annual registration fees assessed pursuant to Rule 201, as well as fees costs and other charges and penalties of the State Board of Law Examiners remitted pursuant to K.S.A. 20-1a01, all become public funds once received by the Clerk and remitted to the State Treasurer.

The argument that monies of the state not placed in the state treasury are to be regarded as other than public funds was long ago rejected. See *State ex rel. Griffith v. Thompson*, 115 Kan. 457 (1924). See also *State ex rel. Boynton v. State Highway Commission*, 139 Kan. 391, 32 P.2d 493 (1934). The distinction whether funds are deposited in the state treasury, or merely with the state treasurer merely as a custodian thereof, is important in determining the constitutional necessity of an appropriation to authorize expenditure of such funds. Art. 2, § 24, Kansas Constitution. However, it is not determinative of the public or private nature of funds so held by the treasurer, but expressly

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excepted from the state treasury itself. Clearly, in my judgment, the monies in question are public funds, and your compensation as Disciplinary Administrator is paid therefrom by the State of Kansas within the meaning of section 9(c), ch. 190, L. 1975. I cannot but concur in the opinion addressed to Mr. John Corkhill, under date of June 25, 1975, by Special Assistant Attorney General Marshall Crowther, a copy of which is enclosed.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj

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



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CURT T. SCHNEIDER
Attorney General

June 25, 1975

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 have inquired regarding the retirement status of the Honorable Earl C. Hatcher, who is a retired member of the retirement system for judges and justices. At the present time, Mr. Hatcher is serving as the disciplinarian employed by the board of law examiners and is receiving monthly retirement benefits under the provisions of the retirement system for judges and justices, K.S.A. 20-2601 et seq. Your particular question regards the eligibility to serve and/or receive benefits subsequent to July 1, 1975, which is the effective date of House Bill 2058 enacted by the 1975 Session of the Kansas Legislature.

At the present time the only restrictions regarding the receipt of benefits by retired judges and justices is that in the event they are engaged in the practice of law their earnings, prior to attainment of age 72 may not exceed the statutory amount. Effective July 1, 1975, the eligibility for benefits is modified by an amendment to K.S.A. 20-2610 which will provide in pertinent part:

"(c) Except as otherwise provided in this subsection, if a person, who has retired as a judge and is receiving a monthly annuity of more than one hundred dollars (\$100) under this act or the acts of which this act is amendatory, should be employed, elected or appointed in or to any position or office for which compensation for service in excess of two thousand four hundred dollars (\$2,400) per annum is paid by the state of Kansas or any county, city, township, special district, political subdivision or any instrumentality of any one or several of the aforementioned, such person shall not receive any such annuity for any month for

which he serves in such position or office. For the purpose of this subsection, compensation shall not be construed to include any amounts provided by the employer for expenses. This subsection shall not apply to:

- (1) Service rendered by such retirant as a juror, as a witness in any legal proceeding or action, as a school crossing guard or a school crossing patrolman, as an election board judge or clerk, or in any office or position of a similar nature, as an officer, employee, appointee or member of the legislature or in the performance of judicial duties assigned pursuant to K.S.A. 20-2616; or
- (2) the employment of any such retirant employed by the state of Kansas or any county, city, township, special district, political subdivision or any instrumentality of any one or several of the aforementioned for a period of not to exceed ninety (90) days in any one calendar year. The ninety-day privilege shall be strictly construed, with the exceptions that if such retirant is employed on a monthly basis, three (3) calendar months shall be considered ninety (90) days, and if compensation is received for any portion of a day, that day shall be construed as a full day in computing the total number of days employed."

We can find, after a careful reading of the above, no prohibition against Mr. Hatcher being employed as the disciplinarian by the Kansas board of law examiners. However, it is our understanding that the compensation for such services is in excess of \$2400 per year and, therefore, he would not be eligible for benefits except as provided in (c) (2) for a ninety-day or three-month period in any calendar year. In previous opinions this office has advised you that, as set forth in the retirement act, a calendar year is the twelve-month period commencing on January 1 and ending inclusive of December 31. During such period, Mr. Hatcher while employed as described above, would be entitled to three (3) monthly benefit payments from the retirement system. If his employment ceased at any point his retirement benefits would accrue from the first day of the month following the month in which his employment ceases.

With regard to the calendar year 1975, it is noted that Mr. Hatcher will have received six (6) months' benefits from the

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retirement system and will have been employed for six (6) months on the effective date of the act. It is our opinion that a fair reading of the law would not take into account actions which have occurred prior to the effective date of the legislation. It is therefore our opinion that should Mr. Hatcher continue as the disciplinarian for the balance of 1975 he would be entitled to three (3) months of benefits subsequent to July 1, 1975, before benefits would be terminated.

Very truly yours,

Marshall Crowther
Special Assistant Attorney General

MC:bg