



STATE OF KANSAS

Office of the Attorney General

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

Curt T. Schneider
Attorney General

January 10, 1977

ATTORNEY GENERAL OPINION NO. 77- 10

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

Re: Retirement System--Membership--Judges

Synopsis: A district magistrate judge who is appointed to office or retained in office by a vote of the electors, but who is not elected thereto by a partisan election, is not an elected official who may elect whether to become a member of the Kansas public employees' retirement system. A judge who is elected to office, and thereafter subject to retention, is an elected official only during the term to which he or she was elected, and not during any subsequent term for which such judge was not elected, but retained.

* * *

Dear Mr. Corkhill:

K.S.A. 1976 Supp. 20-341(b) provides in pertinent part thus:

"District magistrate judges may become members of the Kansas public employees' retirement system in the manner provided by law for becoming a member thereof."

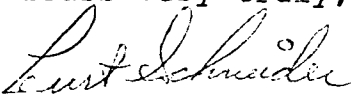
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K.S.A. 1976 Supp. 74-4911(1) provides that

"Any employee of a participating employer other than an elected official on the entry date of such employer shall be a member of the system on either the entry date or the first day of the payroll period coinciding with or following the completion of one (1) year of service whichever is later."

However, under K.S.A. 1976 Supp. 74-4911(3), any elected official may elect whether to become a member of the system, and membership is not mandatory.

You request my opinion whether a district magistrate judge selected in a district which has approved the nonpartisan method of selection of judges is to be considered an elected official for the purposes of determining eligibility for membership in the Kansas public employees retirement system. In my judgment, a judge who is elected to office through a partisan election as used prior to the adoption of the procedure prescribed by K.S.A. 1976 Supp. 20-2901 et seq. is an elected official for the duration of the term to which he or she was elected. However, any judge who is appointed to office as prescribed by the nonpartisan selection plan, or who is retained in office by a vote of the electors, is not in my opinion an elected official during the term to which he or she was appointed, or during the term for which he or she was retained in office, and membership in the Kansas public employees retirement system is thus mandatory for such appointed and retained persons.

Yours very truly,

CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj

cc: Mr. Marshall Crowther
Attorney
Public Employees Retirement System