



STATE OF KANSAS

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Curt T. Schneider
Attorney General

January 12, 1977

ATTORNEY GENERAL OPINION NO. 77- 16

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

Re: Retirement--Benefits--Public Schools of Other States

Synopsis: Employment with a state university or junior college of another state does not constitute employment in the "public school system" of such other state within the meaning of K.S.A. 74-4936a.

* * *

Dear Mr. Corkhill:

K.S.A. 74-4936a provides in pertinent part thus:

"Any employee of a participating employer who is a member of the Kansas public employees retirement system, who was previously employed in a teaching position with a *public school system of another state* may elect to purchase additional benefits for not to exceed ten (10) years of such out-of-state public school employment. . . ."
[Emphasis supplied.]

You advise that a member of the Kansas Public Employees Retirement System has applied to purchase additional benefits based

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upon service with the Pensacola Junior College in Pensacola, Florida, and the University of North Carolina at Asheville, North Carolina. You inquire whether service with a junior college and a state university constitutes service with a "public school system of another state" within the meaning of the quoted provision.

The meaning of the term "public schools" has been raised in a number of contexts. See 35 Words and Phrases, pp. 628 et seq. The clear weight of authority reflected in such cases is that the term is regarded as including elementary and secondary schools, and as not encompassing institutions of higher education and post-secondary education, unless the context clearly and specifically compels a broader and more inclusive meaning. See, e.g., *Yanow v. Seven Oaks Park, Inc.*, 11 N.J. 341, 94 A.2d 482; *In re Townsend*, 195 N.Y. 214, 88 N.E. 41. This distinction between public schools and public institutions of higher education is recognized in this state, and is expressly drawn in article 6, §§ 1, 2 and 5 of the Kansas Constitution. See also 113 A.L.R. 697. At 68 Am.Jur.2d *Schools*, § 2, the writer states thus:

"Schools which are not considered common or public schools include private and parochial schools, normal schools . . . and colleges and universities." [Footnotes omitted.]

We must assume that in enacting K.S.A 74-4936a, the legislature used the term "public schools" in its ordinary acceptation, barring any clear and explicit basis for attributing to the term its extraordinary and unusual meaning. Thus, in my judgment, employment in a state university or junior college of another state does not constitute employment in the "public school system" of such other state within the meaning of K.S.A 74-4936a.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj

cc: Mr. Marshall Crowther
Attorney
Public Employees Retirement System