

STATE OF KANSAS

## Office of the Attorney General

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Attorney General

May 16, 1978

ATTORNEY GENERAL OPINION NO. 78- 167

Mr. Marshall Crowther  
Attorney  
Public Employees Retirement System  
400 First National Bank Tower  
One Townsite Plaza  
Topeka, Kansas 66603

Re: Retirement--Compensation--Definition

Synopsis: The term "compensation" used at K.S.A. 1977 Supp. 12-5005(b) and "salary" at K.S.A. 1977 Supp. 13-14a06 both include all monies which are paid to the employee for and by reason of his or her employment, and each term includes lump sum payments of accrued sick leave pay.

\* \* \*

Dear Mr. Crowther:

You advise that one Kenneth J. Rhines has been a member of the firemen's pension system maintained by the City of Kansas City, Kansas, which was originally established under K.S.A. 13-14a01 et seq., subsequently amended by charter ordinance. On January 1, 1978, the City of Kansas City, Kansas, affiliated with the Kansas Police and Firemen's Retirement System for the administration of its local plan under K.S.A. 1977 Supp. 12-5001 et seq. As a result of this action, Mr. Rhines elected to become a special member of the Kansas Police and Firemen's Retirement System under K.S.A. 1977 Supp. 12-5003. He retired on February 16, 1978. At the time of his retirement, he received a lump sum payment of accrued sick leave from which retirement contributions were withheld. This withholding prompts this inquiry.

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K.S.A. 1977 Supp. 12-5005(b) prescribes the withholding required of special members, such as Mr. Rhines. It states in pertinent part thus:

"[T]he city shall deduct from the compensation of each such special member the greater of seven percent (7%) or the percentage rate of contribution which such active member was required to contribute to the local police or fire pension plan preceding the entry date of the city, as employee contributions."  
[Emphasis supplied.]

Under K.S.A. 1977 Supp. 13-14a06, governing the local plan, there shall be deducted

"from the salary of every officer and member of each department seven percent (7%) of his or her monthly salary . . . ." [Emphasis supplied.]

The term "compensation" is defined at K.S.A. 1977 Supp. 74-4902(9), part of the Kansas Public Employees Retirement Act, K.S.A. 74-4901 et seq., to mean and include

"all salary, wages, and fees payable to a member for personal services performed for a participating employer, including maintenance or any allowance in lieu thereof provided a member as part of compensation . . . ."

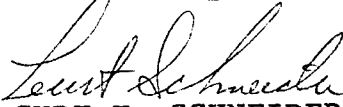
This definition governs construction of the term as used in the Kansas Police and Fire Retirement System. K.S.A. 74-4952(13).

The question which is raised is whether the difference between the terms "compensation" and "salary" is significant and, if so, whether K.S.A. 1977 Supp. 12-5005(b) are an exclusion or exception to the provisions of the local plan contemplated by K.S.A. 1977 Supp. 12-5003(b).

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Statutes relating to the same subject matter are in pari materia, and should be construed together, when possible. See, e.g., Flowers v. Marshall, 208 Kan. 900, 494 P.2d 1184 (1972). K.S.A. 1977 Supp. 12-5005(b), involved here, permits certain members of local police or fire pension plans to elect to become "special members" of the Kansas Police and Firemen's Retirement System. The definition of "compensation," as used in that act, is that given above from the Kansas Public Employees Retirement Act, and includes "all salary, wages, and fees payable to a member for personal services performed for a participating employer . . . ." The phrase is obviously included to include all moneys, however, denominated, which are paid to an employee for personal services. In Temple v. Pennsylvania Department of Highways, 445 Pa. 539, 285 A.2d 137 (1971), the court held that "sick leave . . . is an incident or benefit provided under the work agreement, and is an entitlement like wages for services performed," and concluded that sick leave pay was properly excluded as a credit against unpaid workmen's compensation credit because it was the "sick leave portion of wages for services performed in the line of claimant's work duties." In my judgment, there is no meaningful distinction to be drawn between "compensation" as used in K.S.A. 1977 Supp. 12-5005(b), and the term "salary" as used in K.S.A. 1977 Supp. 13-14a06; each is used to include all monies paid to the employee for and by reason of his or her employment, and so construed, both include sick leave pay.

Yours truly,

  
CURT T. SCHNEIDER  
Attorney General

CTS:JRM:kj