

STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

June 9, 1978

ATTORNEY GENERAL OPINION NO. 78-180

Mr. Thomas C. Lysaught
County Counselor
511 Huron Building
Kansas City, Kansas 66101

Re: Cities--Retirement--CETA Employees

Synopsis: 1978 Senate Bill 688, amending K.S.A. 1977 Supp. 74-4902 to exclude CETA participants from the Kansas Public Employees Retirement Act is not, as a matter of law, facially unconstitutional.

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Dear Mr. Lysaught:

You inquire concerning 1978 Senate Bill No. 688, which amends K.S.A. 1977 Supp. 74-4902 to exclude from the definition of "employee" for the purposes of the Kansas Public Employees Retirement Act, K.S.A. 74-4901 *et seq.*, "any employee of an eligible employer who is a participant in public service employment under Title II and Title IV of the federal comprehensive employment and training act of 1973."

This amendment was prompted by revision of regulations of the Secretary of Labor concerning use of CETA funds for the payment of the cost of retirement benefits accruing to CETA participants. In Opinion No. 77-384, we concluded further that a statutory amendment was necessary in order to enable Kansas cities to comply with 28 C.F.R. § 98.25 concerning use of CETA funds for retirement benefits. The response of the 1978 legislature was to exclude CETA participants categorically from the retirement act. According to a Field Memorandum No. 203-78 of the Employment and Training Administration of the U.S. Department of Labor, dated March 29, 1978, this is an unacceptable legislative response. Paragraph 4(a) thereof commences thus:

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"As a general consideration, prime sponsors may not categorically exempt all CETA participants from retirement system membership. This is contrary to Section 208(a)(4) of the Act which states that CETA participants will be assured of receiving benefits at the same levels and to the same extent as other employees of the employer"

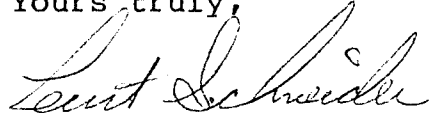
Our concern here is not whether the 1978 legislation complies with directives of the Department of Labor, a question which must necessarily be resolved between the prime sponsors and the Department. You inquire whether the 1978 amendment is unconstitutional, its asserted defect being that it unlawfully and discriminatorily excludes from the Kansas Public Employees Retirement System CETA participants who were eligible employees under the Kansas Public Employees Retirement Act prior to the 1978 amendment and who became employees of the city under the CETA program either prior to July 1, 1978, or prior to the effective date of the amended regulations of the Secretary of Labor regarding use of CETA funds for retirement benefits, October 1, 1977.

Although the Federal Comprehensive Employment and Training Act of 1973 and regulations promulgated thereunder apparently include no fixed limitation upon the duration of employment of a public employee in a CETA-funded position, the act obviously envisions that such employment is to be temporary in nature, designed to provide a transition toward more permanent and unsubsidized employment. The definition of "employee" at K.S.A. 1977 Supp. 74-4902 excludes any employee "whose employment is not seasonal or temporary and whose employment requires at least one thousand (1,000) hours of work per year" The Kansas legislature might reasonably have concluded that CETA employees, while employed on a full-time basis and thus for more than 1,000 hours per year, are nonetheless properly regarded as temporary employees, holding positions in CETA-subsidized employment designed to furnish the participant a transition to permanent unsubsidized employment with either the public employer, another public employer, or in the private sector, and thus should be excluded from participation in the retirement system on that basis. I cannot conclude that such a judgment is entirely arbitrary, capricious or without any reasonable basis whatever, and hence, I cannot conclude that the 1978 amendment is invidiously or arbitrarily discriminatory so as to constitute a denial of equal protection of the laws to those employees affected by it. Obviously, whether

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the Secretary of Labor regards the amendment as a satisfactory response to the May 13, 1977, revision of § 98.25 of the CETA regulations regarding use of CETA funds for the payment of retirement benefits raises other questions which, as stated above, are not raised here and which, so far as appears, must be resolved only between the Department and the prime sponsors.

Yours truly,

A handwritten signature in cursive script, appearing to read "Curt T. Schneider".

CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj