



STATE OF KANSAS

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October 19, 1978

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ATTORNEY GENERAL OPINION NO. 78- 337

Mr. Harry W. Gantenbein
Attorney for U.S.D. #273
108 East Main
Beloit, Kansas 67420

Re: Schools--Retirement--Social Security

Synopsis: If a unified school district elects to withdraw from participation in the federal Social Security program, its employees will no longer be eligible for participation in the Kansas Public Employees Retirement System.

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Dear Mr. Gantenbein:

You advise that employees of U.S.D. No. 273 are now covered by the federal Social Security Act, and are participants in the Kansas Public Employees Retirement System. However, at the request of the employees, the district is considering the possibility of withdrawal from the Social Security system. You inquire whether, if the district did elect to withdraw from participation in the Social Security system, the district employees would continue to be eligible participants in the Kansas Public Employees Retirement System.

K.S.A. 1977 Supp. 74-4902(13) defines "eligible employer" as

"the state of Kansas, and any county, city, township, special district or any instrumentality of any one or several of the aforementioned whose employees are covered by social security and are not covered by or

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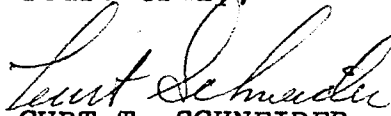
eligible for and will not become eligible for another retirement plan authorized under the laws of the state of Kansas which is in operation on the entry date." [Emphasis supplied.]

In addition, K.A.R. 80-1-10 states thus:

"For the purpose of determining membership in the system under K.S.A. 1974 Supp. 74-4902 of the act, the term 'instrumentality' shall include only those instrumentalities which are presently or shall hereafter be covered under the agreement between the federal social security administration and the state of Kansas for the coverage of public employees within the state of Kansas under old age survivors and disability insurance section of the federal social security program or instrumentalities created under K.S.A. 12-2801 et seq. . . ."

As an employer, the district does not constitute an "eligible employer" the employees of which may participate in the Kansas Public Employees Retirement System unless its employees are participants in and subject to coverage of the federal Social Security program. If the district should withdraw from the Social Security system, it would no longer be an "eligible employer" for purposes of participation in the Kansas Public Employees Retirement System.

Yours truly,


CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj