



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN  
ATTORNEY GENERAL

August 9, 1982

MAIN PHONE: (913) 296-2215  
CONSUMER PROTECTION: 296-3751

ATTORNEY GENERAL OPINION NO. 82- 170

Robert F. Lytle  
Bennett, Lytle, Wetzler,  
Winn & Martin  
5100 West Ninety-Fifth Street  
Prairie Village, Kansas 66208

Re: State Boards, Commissions and Authorities--Public  
Employees Retirement System--Out-of-State Public  
School Employment

Synopsis: For purposes of the Kansas Public Employees' Retirement System, the phrase "public school system of another state," as used in K.S.A. 74-4936a, includes public community colleges and area vocational-technical schools, as well as public elementary and secondary schools. Thus, any person who is an employee of a participating employer and a member of the Kansas Public Employees' Retirement System, and who was previously employed in a teaching position with a public elementary or secondary school, or a public community college or area vocational-technical school of another state, may elect, under and to the extent specified by K.S.A. 74-4936a, to purchase additional benefits under the Kansas Public Employees' Retirement System. Attorney General Opinion No. 77-16 is withdrawn. Cited herein: K.S.A. 74-4931, 74-4932, 74-4936a.

\*

\*

\*

Robert F. Lytle  
Page Two

Dear Mr. Lytle:

As counsel for Johnson County Community College, you ask us to review Attorney General Opinion No. 77-16, which concluded that an instructor at a Kansas community college, who is a member of the Kansas Public Employees' Retirement System (KPERs) and who was previously employed in a teaching position with a community junior college of another state, could not elect to purchase additional benefits for such out-of-state employment, under the provisions of K.S.A. 74-4936a.

K.S.A. 74-4936a, in part relevant to your inquiry, provides:

"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 added.)

The issue in controversy is whether community colleges can be considered a part of the "public school system of another state," so that persons, who now are members of KPERs and who were previously employed as teachers in out-of-state community colleges, may purchase additional benefits under KPERs for such prior out-of-state employment.

It is not clear whether such out-of-state employment qualifies a person to take advantage of the election prescribed in this statute. Therefore, as was done in the prior opinion of this office, resort must be made to the rules of statutory construction in order to ascertain and give effect to the legislative intent.

We agree with the prior statement of this office that the meaning of the term "public schools" depends upon the context in which the term is employed. However, we disagree with the conclusion reached in Attorney General Opinion No. 77-16, that the context of K.S.A. 74-4936a, when considered in conjunction with several rules of statutory construction, does not embrace employment with a community college.

A brief statement of the history of K.S.A. 74-4936a is appropriate and helpful. The provisions of this statute were enacted in 1972 (L. 1972, ch. 305, §1) and were introduced in the legislature as 1972 House Bill No. 1969 (1972 HB 1969). These provisions have not been amended since the time of their enactment.

The relation of the provisions of 1972 HB 1969 to other statutes and the general purpose of those provisions is reflected in the title of that act, which reads: "AN ACT relating to the Kansas public employees retirement system; authorizing the purchase of additional benefits for out-of-state school employment." (Emphasis added.) As was stated in Arredondo v. Duckwall Stores, Inc., 227 Kan. 840 (1980):

"Though the heading or title given an act by the legislature forms no part of the statute itself, State v. Logan, 198 Kan. 211, 217, 424 P.2d 565 (1965), the language of the title cannot be ignored as an aid in determining legislative intent. Baker v. Land Co., 62 Kan. 79, 82-83, 61 Pac. 412 (1900); Mitchell v. State, 61 Kan. 779, 784, 60 Pac. 1055 (1900)." (Emphasis added.)  
Id. at 846.

The title given the 1972 act, as well as the context of the act itself, leads to the inescapable conclusion that the act was designed to allow certain persons who are current members of KPERS to purchase additional benefits under that system, based upon out-of-state school employment.

Although the 1972 act does not define any term used therein, the term "school employment" is defined in another statute relating to KPERS. That statute is K.S.A. 74-4932, which was enacted just two years prior to K.S.A. 74-4936a. We believe these two statutes are in pari materia and should be construed together in determining legislative intent. See, e.g., Claffin v. Walsh, 212 Kan. 1 (1973) and Flowers v. Marshall, 208 Kan. 900 (1972). Moreover, it is a well-settled rule of statutory construction that, "[o]rdinarily, identical words or terms used in different statutes on a specific subject are interpreted to have the same meaning in the absence of anything in the context to indicate a different meaning was intended." Williams v. Board of Education, 198 Kan. 115, 124 (1967), quoted and followed in Callaway v. City of Overland Park, 211 Kan. 646, 652 (1973).

We note that nothing in the context of K.S.A. 74-4936a indicates an intent on the part of the legislature to give the term "school employment" a different meaning from that prescribed in K.S.A. 74-4932(8). In addition, we have reviewed the minutes of the legislative committees that considered 1972

Robert F. Lytle  
Page Four

HB 1969, and find nothing in those minutes which indicates that the term "school employment," as used in K.S.A. 74-4936a, was to have a meaning different from that prescribed in K.S.A. 74-4932(8).

Finally, in determining the meaning of K.S.A. 74-4936a, we believe we must invoke the rules of statutory construction that, in determining legislative intent, it is essential to consider statutes in existence when the statute involved was enacted [see State, ex rel., v. Shawnee County Comm'rs, 159 Kan. 87, 90 (1944) and Motor Equipment Co. v. Winters, 146 Kan. 127 (1937)] and that the provisions of related statutes should be construed together to make them consistent, harmonious and sensible [see NEA-Wichita v. U.S.D. No. 259, 225 Kan. 395, 399 (1979)].

In 1970, the legislature enacted a law (1970 House Bill No. 1971; L. 1970, ch. 326) under which the benefits of KPERS were made available to certain governmental employees who had not previously been entitled to those benefits. This 1970 act is now codified at K.S.A. 74-4931 et seq. Under Section 1 of that act (now K.S.A. 74-4931), the following governmental agencies were made "eligible employers" for purposes of KPERS: "(1) Kansas public school districts; (2) Kansas area vocational-technical schools; [and] (3) Kansas community junior colleges." (Emphasis added.)

In Section 2 of that 1970 act (now K.S.A. 74-4932), the legislature prescribed definitions for various terms used in the act, including definitions of the terms "employee" and "school employment." The latter term was defined thusly:

"'School employment' means the employment of a member when employed by an eligible employer as specified in any of subsections (1), (2) or (3) of K.S.A. 74-4931."

As subsections (1), (2) and (3) of K.S.A. 74-4931 make public school districts, area vocational-technical schools, and community junior colleges "eligible employers," the above-quoted definition may be read so that "school employment" means the employment of a member when employed by a public school district, an area vocational-technical school, or a community junior college. Thus, in 1970, the legislature made the benefits of KPERS available to persons who were employed by community junior colleges, and who met other eligibility requirements under that act.

Robert F. Lytle  
Page Five

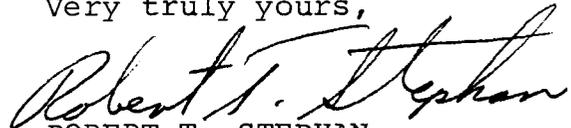
Then, in 1972, the legislature enacted the provisions of K.S.A. 74-4936a, under a title reflecting that its provisions were for the purpose of authorizing KPERS members to purchase "additional benefits for out-of-state school employment." (Emphasis added.)

We cannot believe the legislature, in 1970, extended the benefits of KPERS to qualified employees of community junior colleges, then, in 1972, intended to exclude those same employees from the right to purchase additional benefits under that system. While it is true that K.S.A. 74-4936a uses the phrase "public school system of another state," and that, quite often, the term "public schools" includes only elementary and secondary schools, we believe the context in which the phrase is used and the history of this legislation indicate the legislature intended that phrase to include community colleges and area vocational-technical schools. In our judgment, construing the phrase "public school system of another state" in this manner effectuates the purpose of the legislature for enacting the provisions of K.S.A. 74-4936a, i.e., to allow the purchase of additional benefits under KPERS by those persons which the legislature had just recently brought under that system.

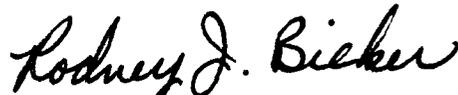
Thus, it is our opinion that, for purposes of the Kansas Public Employees' Retirement System, the phrase "public school system of another state," as used in K.S.A. 74-4936a, includes public community colleges and area vocational-technical schools, as well as public elementary and secondary schools. Thus, we also are of the opinion that any person who is an employee of a participating employer and a member of the Kansas Public Employees' Retirement System, and who was previously employed in a teaching position with a public elementary or secondary school, or a public community college or area vocational-technical school of another state, may elect, under and to the extent specified in K.S.A. 74-4936a, to purchase additional benefits under the Kansas Public Employees' Retirement System.

Attorney General Opinion No. 77-16 is withdrawn.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



Rodney J. Bieker  
Assistant Attorney General

RTS:BJS:RJB:jm