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ATTORNEY GENERAL OPINION NO. 89- 138

The Honorable L. V. Roper
State Representative, Fourth District
201 S. Cherokee
Box 276
Girard, Kansas 66743

Re: State Boards, Commission and Authorities--Public
Employees Retirement Systems; Elected State
Officers--Definitions; Contributions; Retirement
Benefits

Synopsis: Despite the fact that a former member of the legislature is included in the definition of "elected state official" under K.S.A. 1988 Supp. 74-4998b, years of state service after leaving the legislature are not included in the "elected state official's years of credited service" under K.S.A. 1988 Supp. 74-4998d. The definition serves merely as a listing of those individuals that may elect to become special members of the Kansas public employees retirement system. Also, a former member is exempt from making the contributions required under K.S.A. 1988 Supp. 74-4998c. Cited herein: K.S.A. 1988 Supp. 74-4998a; 74-4998b; 74-4998c, 74-4998d.

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Dear Representative Roper:

As Representative for the Fourth District, you request our opinion regarding the calculation of retirement benefits under the provisions of K.S.A. 1988 Supp. 74-4998a et seq.

Specifically, you ask whether a former member of the legislature who has been an employee of the state since leaving the legislature and who filed to become a special member of the Kansas public employees retirement system (KPERS) by November 18, 1988, should have all employment with the state included as "elected state official's years of credited service" under K.S.A. 1988 Supp. 74-4998d. You also ask whether a former member of the legislature is required to make the 5% contribution required in K.S.A. 1988 Supp. 74-4998c.

The legislature may define, by statute, words or phrases used therein and may declare in the body of an act the construction to be placed thereon. 82 C.J.S. Statutes, §315, p. 536. However, the defining clause will not preclude judicial construction of the statute, statutory definitions, or construction provisions. Velazquez v. Hunter, 159 F.2d 606 (10th Cir. 1947). The defining clause will not be deemed to create a unique phrase to be read as a single term if to do so would result in absurd or useless legislation. It is presumed that the legislature would not enact absurd or useless legislation. Herd v. Chambers, 158 Kan. 614 (1944).

"Elected state official" is defined in subsection (b) of K.S.A. 1988 Supp. 74-4998b as "any member of the legislature, or a former member of the legislature, the governor, the lieutenant governor, the secretary of state, the attorney general, the commissioner of insurance and the state treasurer; and any person who formerly served in any such capacity who has 10 or more years of credited service and who has not yet retired or withdrawn such person's accumulated benefits." This definition serves merely as a listing of those individuals that may file to become special members of KPERS. The legislature did not intend to create a unique phrase to be read as a single term for to do so would render provisions of the statutes useless or absurd.

If the legislature had created a unique phrase, its application in three statutes would result in a useless or absurd provision. Under K.S.A. 1988 Supp. 74-7448b, the election of an elected state official to become a special member of KPERS is to "remain in effect until the member ceases to serve as an elected state official." Years of credited service are to be figured, as directed by K.S.A. 1988 Supp. 74-4998d, "on the date the member ceased to serve as an elected state official". Because the definition includes former members of the legislature and those persons who

formerly served in the six statewide elected offices, its application in these two instances would result in a useless or absurd phrase. It is virtually impossible to cease serving as a "former member of the legislature" or a "person who formerly served in any such capacity". Also, under K.S.A. 1988 Supp. 74-4998c, an elected state official is to contribute 5% of the elected state official's salary for each payroll period. If a unique phrase was intended, the former legislator would be required to contribute 5% of any salary earned after leaving the legislature. As it is presumed that the legislature did not enact useless or absurd legislation, the definition of "elected state official" did not create a unique phrase to be read as a single term.

In establishing the meaning of a phrase, all parts, provisions, or sections of a statute or section, must be read, considered, or construed together, and each must be considered with respect to, or in the light of, all the other provisions or sections, and construed in connection, or harmony, with the whole. Thoman v. Farmers & Bankers Life Ins. Co., 155 Kan. 806 (1942). Where the language of a statute is plain and unambiguous there is no occasion for construction, and the statute must be given effect according to its plain and obvious meaning. Matter of Estate of Estes, 239 Kan. 192 (1986).

Through a plain reading of all the provisions of K.S.A. 1988 Supp. 74-4998d, it can be determined that the term "elected state official's years of credited service" is not to include service after the official ceases to be a member of the legislature. The statute states that years of credited service are to be "determined on the date the member ceased to serve as an elected state official", if such elected state official made an election to become a special member by November 11, 1988, or within 30 days after the elected state official takes the oath of office for the first time." Because the years of credited service are to be determined on the date the member leaves the legislature, it is impossible to include service after that date. A former member of the legislature is not entitled to include in the "elected state official's years of credited service" years of service in another role.

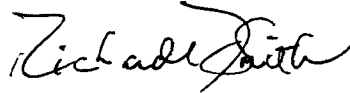
The rules of construction of a statute are useful in determining the true intention of the law. However, the rules may be used only in cases of doubt, and are never to be used to create doubt but only remove it. Willmerth v. Harris, 195 Kan. 220 (1965). K.S.A. 1988 Supp. 74-4998c(e)

shall be required to make contributions as otherwise required by this section." Therefore, a former legislator will not be required to make the 5% contribution required of elected state officials or the 2% contribution required of members who have received 30 years of credited service. However, the former member of the legislature is not exempt from contribution requirements of other statutes if such other statutes are deemed applicable.

Very truly yours,



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RTS:JLM:RDS:jm