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ATTORNEY GENERAL OPINION NO. 92- 131

Meredith Williams
Executive Secretary
Kansas Public Employees Retirement System
Capitol Tower, Suite 200
400 S.W. 8th
Topeka, Kansas 66603-3925

Re: State Boards, Commissions and Authorities--Public
Employees Retirement Systems; State School
Retirement System Merger Into KPERS--Eligible
Employees; Definition

Synopsis: K.S.A. 1991 Supp. 74-4902 and 74-4932 clearly
require that a person be employed in a position
requiring 1,000 hours of work per year in order for
that person to be considered an eligible employee
under KPERS. If a person does not meet this
qualification, the person may not participate in
KPERS. Cited herein: K.S.A. 1991 Supp. 74-4902;
74-4911, as amended by L. 1992, ch. 321, § 6;
K.S.A. 74-4931; K.S.A. 1991 Supp. 74-4932; 74-4935.

* * *

Dear Mr. Williams:

As executive secretary for the Kansas public employees
retirement system (KPERS), you request our opinion regarding
whether certain persons employed by a unified school district
may become members of KPERS. These persons generally work for
up to 20 hours a week during the school term, but may not work
for 1,000 hours per year. Examples of such employment are
school bus drivers and school cooks.

Pursuant to K.S.A. 74-4931, public school districts are expressly included as eligible employers as defined in K.S.A. 1991 Supp. 74-4902. Those employees of the school district who are eligible to become members of KPERS are set forth in K.S.A. 1991 Supp. 74-4911, as amended by L. 1992, ch. 321, § 6 and K.S.A. 1991 Supp. 74-4935. The ability to become a member of KPERS is based upon the person's status as an employee of the school district. Employee is defined in K.S.A. 1991 Supp. 74-4932(4) as:

"[A]ny employee of a participating employer which is an eligible employer as specified in K.S.A. 74-4931 and amendments thereto, whose employment is not seasonal or temporary and whose employment requires at least 1,000 hours of work per year. . . ."

A similar definition for employee is set forth in K.S.A. 1991 Supp. 74-4902, also requiring that the employment not be seasonal or temporary and require at least 1,000 hours of work per year.

A fundamental rule of statutory construction is that the intent of the legislature governs when the intent can be ascertained from the statute. Steele v. City of Wichita, 250 Kan. 524, 529 (1992). In construing a statute, courts are not justified in disregarding the clear intent of the statute appearing from its plain and unambiguous language. Boaldin v. University of Kansas, 242 Kan. 288, 291 (1987). When a statute is clear and unambiguous, it must be applied accordingly without judicial construction. Capital Electric Line Builders, Inc. v. Lennen, 232 Kan. 379, Syl. ¶ 4 (1982); Batt v. Globe Engineering Co., 13 Kan.App.2d 500, 503 (1989).

K.S.A. 1991 Supp. 74-4902 and K.S.A. 1991 Supp. 74-4932 clearly require that a person be employed in a position requiring 1,000 hours of work per year in order for that person to be considered an eligible employee under KPERS. If a person does not meet this qualification, the person may not participate in KPERS. Therefore, a person employed by a

unified school district who works less than 1,000 hours per year may not become a member of KPERS.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Richard D. Smith
Assistant Attorney General

RTS:JLM:RDS:jm