



STATE OF KANSAS

Office of the Attorney General

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

Curt T. Schneider
Attorney General

August 10, 1976

ATTORNEY GENERAL OPINION NO. 76- 244

Mr. John K. Corkhill
Executive Secretary
Public Employees Retirement System
400 First National Bank Tower
One Townsite Plaza
Topeka, Kansas 66603

RE: Retirement - Board of Regents - Annuities

SYNOPSIS: The election of an employee who is eligible under subsection (1)(a) of K.S.A. 1975 Supp. 74-4925, as amended, to elect, prior to July 1, 1976, to participate in a retirement annuity plan described in that section in lieu of receiving participating service credit under the Kansas public employees retirement system, and who does so prior to July 1, 1976, is valid and binding thereafter, notwithstanding the employee terminates employment prior to August 18, 1976.

* * *

Dear Mr. Corkhill:

During the 1976 legislative session, K.S.A. 1975 Supp. 74-4925 was amended by 1976 Senate Bill 994, see ch. 347, L. 1976, to enlarge the number of persons employed by the State Board of Regents who are eligible for assistance in the purchase of retirement annuities.

Section 1(5)(b) of ch. 347 requires that an election be filed thus:

"All employees who are described in subsection (1)(a) of this section and who are receiving participating service credit under the Kansas public employees retirement system after the effective

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date of this act [April 19, 1976] and prior to July 1, 1976, shall file a written statement of election on or before July 1, 1976, with the board of trustees of the Kansas public employees retirement system to participate under the plan described in subsection (2) of this section in lieu of receiving participating service credit under said system. Failure to file such written election shall be presumed to be an election not to participate in such plan and to continue receiving such participating service credit under said system. Such election, whether to participate in such plan or not to participate shall be effective on August 18, 1976, and shall be irrevocable."

The question is raised concerning the effect of an election made by an employee described in subsection (1) (a) of K.S.A. 1975 Supp. 74-4925 as amended, who properly executes and timely files the election prior to July 1, 1976, but who terminates employment prior to August 18, 1976. In an opinion dated June 28, 1976, the chief attorney for the Department of Administration concluded that because the person involved would not be an employee on August 18, 1976, the effective date of the election, it could not be honored.

In my judgment, eligibility to make the election must be determined as of the date the election is made, i.e., after April 19, 1976, and prior to July 1, 1976. If the employee is eligible to make the election at the time he or she does so, and the employee acts to make the election within the time prescribed by law, it is thereafter irrevocable, and is binding upon both the employee and the System. Certainly, the election becomes operative, i.e., the electing employee no longer receives participating service credit under the Kansas public employees retirement system, from and after August 18, 1976. It remains, nonetheless, a binding election upon both the employee and the System from and after July 1, 1976, the date by which the employee must have made the election, and it is as of that date that the employee's eligibility to make the election must be determined.

Yours very truly,


CURT T. SCHNEIDER
Attorney General

CTS:JRM:en