



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

November 10, 1976

ATTORNEY GENERAL OPINION NO. 76- 341

Mr. Marshall Crowther
Attorney
Public Employees Retirement System
400 First National Bank Tower
One Townsite Plaza
Topeka, Kansas 66603

Re: Retirement--Contributions--Withdrawal

Synopsis: A member of the retirement system who has reached and passed either the normal or mandatory retirement age prescribed by the act, but who has not yet retired and applied for monthly benefits thereunder, may elect to withdraw his or her accumulated contributions therefrom in a lump sum.

* * *

Dear Mr. Crowther:

You inquire concerning the right of a member of the retirement system who has not yet retired to make a lump sum withdrawal of the member's contributions in lieu of receiving monthly benefits after reaching the normal retirement age of 65 years. Your inquiry is prompted by a request from a member who has attained the age of 71 and who has not applied for monthly benefits, and who wishes to withdraw in a lump sum the member's contributions.

K.S.A. 74-4917(1) states in pertinent part thus:

"Upon termination of employment with a participating employer, not followed by employment with such participating employer

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or another participating employer within one hundred twenty (120) days, the member shall be paid an amount equal to his accumulated contributions after making application in such form as may be prescribed by the board

(2) If such member has completed ten (10) years of credited service at date of termination, he will automatically be granted a vested retirement benefit in the system: *Provided, however,* That at any time prior to the commencement of retirement benefit payments and before attaining age sixty-five (65) the member may withdraw his accumulated contributions, whereupon no other benefits shall be payable for his prior and participating service credit."

The question you pose has received conflicting answers from this office. In an opinion dated July 19, 1963, Attorney General Ferguson concluded that "a member who is eligible to retire, but whose retirement has not been effected, would be able to resign his position and withdraw his contributions from the system just as a member under 65 could." In a later opinion, dated June 10, 1964, he concluded that a member who had reached seventy years, the mandatory retirement age, and who had not been extended beyond that age could not elect to withdraw accumulated contributions. He reasoned that the option to withdraw contributions in a lump sum expired once the member reached the mandatory retirement age, ch. 412, § 8(1), L. 1963, found at K.S.A. 74-4914, states in pertinent part thus:

"(1) The normal retirement date for a member of the system shall be the first day of the month coinciding with or following the attainment of age sixty-five (65). . . . Each member who is not an elected official upon giving three (3) months prior notice to the appointing authority may retire on the normal retirement date or the first day of any month thereafter up to the first day of the month following the attainment of age seventy (70), when retirement shall be compulsory"

On the ground that retirement was at that age mandatory, and that the member no longer had a three months' period in which to give

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notice, General Ferguson concluded that the right to withdraw accumulated contributions expired at that time.

In an opinion dated January 22, 1965, Attorney General Londerholm withdraw the 1963 opinion, and concluded that a member who had reached the normal retirement age of 65 had no option to withdraw his accumulated contributions. He reasoned that the election to withdraw contributions must be made before the normal retirement date on the ground that under K.S.A. 74-4917(2), the vested benefit commences at the normal retirement date. In addition, he took the view that withdrawal would conflict with the statutory purpose of the retirement act as set out in K.S.A. 74-4901 thus:

"The purpose of this act is to provide an orderly means whereby employees of the participating employers who have attained retirement age as herein set forth may be retired from active service without prejudice and without inflicting a hardship upon the employees retired and to enable such employees to accumulate reserves for themselves and their dependents to provide for old age, death and termination of employment"

Having reviewed the act and these prior opinions, I find no statutory prohibition against the withdrawal of accumulated contributions after attaining the normal retirement age of 65 years. A member may retire at 65 or may defer retirement until age 70. A member may continue in service after age 70 "at the pleasure of the appointing authority so long as he shall continue to be mentally and physically capable of carrying out his assigned duties." Any such person who continues in service remains "eligible to retire in accordance with the provisions of this act."

Thus a member who continues in service remains eligible to retire at his or her own election at any time prior to being retired, either automatically by reaching 70 years, or by the appointing authority if the member continues in service after that time. Until a member who continues in service after either age 65, the normal retirement age, or age 70, the mandatory retirement age, does in fact elect to retire, the member has the privilege of terminating employment without retiring, and upon that termination, the member is free under the act to withdraw his or her accumulated contributions in a lump sum. Withdrawal of contributions after reaching either the normal or mandatory retirement age is no more

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subversive of the purposes of the act than withdrawal prior to age 65. The accumulation of reserves for the benefit of the employee who has passed the ages of either 65 or 70 years is an accomplished fact, and the member may, as he deems it in his or her own best interest, elect to withdraw those contributions prior to actual retirement, rather than accepting the monthly benefits afforded by the act. The protective purposes of the act are in no wise impaired, in my judgment, by such withdrawals.

Accordingly, it is my opinion that a member of the retirement system who has not yet retired and applied for monthly benefits, but who has reached and passed either the normal or mandatory retirement age prescribed by the act may elect to withdraw his or her contributions in a lump sum.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

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