

STATE OF KANSAS

Office of the Attorney General

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Attorney General

December 12, 1977

ATTORNEY GENERAL OPINION NO. 77- 384

Mr. Donald E. Martin
City Attorney
Ninth Floor - Municipal Office Building
One Civic Center Plaza
Kansas City, Kansas 66101

Attn: Mr. Robert J. Watson

Re: Retirement--Cities--CETA Employees

Synopsis: Municipal employees who hold CETA-funded positions and who hold such positions for a period of one year are not exempt from membership in the Kansas Public Employees Retirement System as "temporary" employees, and upon the completion of one year of service, become members of the System on the same basis as other city employees.

* * *

Dear Mr. Martin:

You inquire whether employees of the City of Kansas City, Kansas, whose employment is funded through public service employment programs of Titles II and VI of the Comprehensive Employment and Training Act of 1973, as amended, are subject to the requirements of the Kansas Public Employees Retirement System, K.S.A. 74-4901 et seq. The question is prompted by amendment of a regulation promulgated under the act, appearing as § 98.25 in 42 Fed.Reg., no. 201, p. 55769, which generally prohibits the use of CETA funds to meet the employer's retirement contribution obligations respecting for CETA participants except for employees in certain circumstances, an exception which is not pertinent here.

The question is thus raised whether city employees whose employment is subsidized through CETA funds are required to be members

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of the Kansas Public Employees Retirement System. By resolution no. 17255, adopted by the city commission August 1, 1961, the City of Kansas City, Kansas, elected to affiliate with the System as a participating employer. This election is irrevocable, and there is no procedure open to the city at this time, and since the amendment of the regulation discussed above, whereby the city may exempt any of its employees from coverage under the act. The term "employee" is defined by K.S.A. 74-4902(14), to include

"any appointed or elective officer or employee of a participating employer whose employment is not seasonal or temporary and whose employment requires at least one thousand (1,000) hours of work per year"

It is suggested that the Comprehensive Employment and Training Act is designed to furnish temporary training and employment, and that as a result, all employees whose positions are subsidized by CETA funds are categorically temporary. We find nothing in the Act which prescribes a fixed maximum duration of employment. It is doubtless an administrative goal of the Act to provide employment which is in fact temporary or transitional, providing training and skills which are likely to lead to unsubsidized public or private employment of more permanent character. However, as a matter of fact, CETA-funded city employees are not employed for any fixed limited period of time, but are employed for an indefinite duration. Indeed, I find nothing in the Comprehensive Employment and Training Act itself which raises a compelling inference that public employees whose positions are subsidized thereunder are any more or less temporary than non-subsidized employees, or that CETA-funded public employees are to be treated any differently from other employees with regard to applicable state retirement programs.

The term "employee" as defined at K.S.A. 74-4902(14), excludes any temporary employee. It includes any person whose position is not seasonal or temporary and whose employment requires at least one thousand hours of work per year. K.S.A. 74-4911(1)

"An employee of a participating employer other than an elected official on the entry date of such employer shall be a member of the system on either the entry date or the first day of the payroll period coinciding with or following the completion of one (1) year of service whichever is later."

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Thus, an "eligible employee" is one whose continuous employment exceeds one year. Perforce, an employee whose period of service exceeds one year is not temporary. I see no reason to apply to CETA-funded employees a different measure of permanence than that which applies to all other employees. Most employment in the public sector, like most employment in the private sector, is of indefinite duration. The determining factor in many instances may be the continued availability of funds to support the positions. Whether the revenue source for a particular position is the general property tax, federal revenue sharing funds, or CETA funds, the duration of employment is only indefinite, and it strains credulity, in my judgment, to categorize one class of employees as "temporary" merely by virtue of the source of funding for the positions involved. Apparently, over one hundred of the CETA employees of the City of Kansas City, Kansas, have been in their positions over one year, and these positions are expected to be continued indefinitely, so long as there are adequate funds available. In short, CETA-funded employees are not materially more or less temporary than other city employees, and in my judgment, they are employees of the city subject to the requirements of the Kansas Public Employees Retirement Act.

Secondly, you inquire whether provisions of the Kansas retirement act, K.S.A. 74-4901 et seq., "permits compliance with the federal regulation 29 CFR § 98.25 as to employer contributions for city employees hired under the Public Jobs Programs of Titles II and VI." As we understand 28 C.F.R. § 98.25, it prohibits the use of CETA funds to meet the employer's retirement contribution obligations respecting CETA-funded employees, except in certain circumstances not pertinent here, thus requiring the city to satisfy this obligation out of other revenue sources. There is no conflict between K.S.A. 74-4901 et seq., and the regulation in question here, for nothing in K.S.A. 74-4901 et seq. requires that employer contributions respecting CETA-funded employees be made from CETA funds themselves. Thus, nothing in the Kansas retirement act requires the city to make any contributions from any revenue source in violation of 28 C.F.R. § 98.25

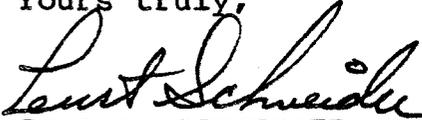
You ask, thirdly, if it is possible for the City of Kansas City, Kansas, to exempt itself from the Kansas Public Employee Retirement System. Under K.S.A. 74-4910(1), upon the filing of a certified copy of a resolution of affiliation with the board of the system, the election to affiliate is irrevocable. Thus, there is no action which the city may take at this time to exempt itself or any of its employees from the System.

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Further, you ask whether the procedures of 29 C.F.R. § 98.25 may legally be implemented by the governor or by any other executive authority. I am aware of no action which may be taken by the governor or by any other executive authority in the State of Kansas to relieve the city of its obligations respecting the employees in question under K.S.A. 74-4901 et seq., so as to alter the fiscal consequences to the city of compliance with the amended regulation in question.

Lastly, you ask whether a change in the Kansas Public Employees Retirement Act so as to delete CETA participants in Title II and Title VI programs from mandatory coverage could have been enacted after May 13, 1977, and before October 1, 1977. The 1977 session of the Kansas Legislature adjourned sine die on May 11, 1977, and does not meet again in regular session until January, 1978. Thus, no legislative change in the Kansas Public Employees Retirement Act could have been enacted after May 13, 1977, and before October 1, 1977, except upon the calling of a special session of the legislature.

Yours truly,


CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj