



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

April 6, 1978

ATTORNEY GENERAL OPINION NO. 78-137

Mr. Robert J. Watson
Assistant City Attorney
Ninth Floor - Municipal Building
One Civic Center Plaza
Kansas City, Kansas 66101

Re: Cities--Retirement--CETA Employees

Synopsis: A statutory amendment is necessary to enable the City of Kansas City, Kansas, or any other Kansas city, to comply with 28 C.F.R. § 98.25. Compliance with that provision may not legally be implemented by executive order of the governor, mayor or any other official of the state of Kansas.

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Dear Mr. Watson:

We have your letter of March 28, 1978, enclosing a copy of a letter of March 17, 1978, from Mr. Richard Miskimins, Regional Administrator of the Employment and Training Administration of the United States Department of Labor, to Mayor Reardon, concerning the grant of an extension of the application of 28 C.F.R. § 93.25 respecting CETA participants who are employed by the City of Kansas City, Kansas, who are subject to and are participants in the Kansas Public Employees Retirement System.

In Opinion No. 77-384, we concluded that 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.

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At the instance of the Regional Administrator, you request our opinion concerning, as stated in his letter, whether "the State legislature must change or modify a State law to enable affected prime sponsors to comply." We discussed the problem involved here at some length in our previous opinion, and it is unnecessary to repeat herein that extended discussion.

The referenced regulation provides in part thus:

"Funds under the Act, however, may be paid into a retirement system on behalf of participants in on-the-job training, work experience and public service employment in public or private non-profit agencies who:

(1) Obtain unsubsidized employment with the employer, provided the time spent as a CETA participant is accredited service under the employer's retirement plan;

(2) Obtain unsubsidized employment with another employer provided benefits are portable; or

(3) Obtain vesting."

Examples of methods of administering such retirement system accounts follow in the regulation.

CETA-funded employees of the city who have completed one year of service are required by K.S.A. 1977 Supp. 74-4902(14) and -4911 to be participating members of KPERS. Kansas law makes no provision for, and does not permit, the administration of retirement system accounts such as outlined in the regulation. CETA-funded employees of the city are required to participate in KPERS by virtue of the cited provisions of state law, and clearly, in my opinion, the State legislature must change or modify or amend a State law to permit the City of Kansas City, Kansas, an affected prime sponsor, to comply with 28 C.F.R. § 98.25.

Secondly, the question is raised whether the procedures of 28 C.F.R. § 98.25 may be legally implemented by executive order. To state once again, if it is not abundantly clear, CETA-funded employees of the city are required by the cited provisions of state law to be participants in the Kansas Public Employees Retirement System. No provision is made for the administration of any retirement system account such as those suggested in the regulation,

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and no authority for treating CETA-funded city employees otherwise, or for exempting from the KPERS, or for the administration of retirement system accounts as suggested in the cited regulation, may be supplied by executive order of the Governor of the State of Kansas, the mayor of the city, or by executive order of any other person.

The employer's contribution to KPERS on behalf of CETA-funded employees of the city who have become members of KPERS is required by K.S.A. 1977 Supp. 74-4920 and -4909(3). If 28 C.F.R. § 98.25 prohibits the use of CETA funds for such contributions, the city must use other funds legally available to it in order to meet this obligation. K.S.A. 1977 Supp. 74-4920(4). Once the employer's contribution to KPERS on behalf of CETA-funded employees of the city has been paid in, no statutory or other authority permits such contributions to be refunded to the city.

The procedures of 28 C.F.R. § 98.25 may not be legally implemented by executive order.

The current regular session of the Kansas Legislature began on January 9, 1978, and under Article 2, § 8 of the Kansas Constitution, the session meets for a period of ninety calendar days, unless two-thirds of the members of each house vote to extend the session beyond that period. At present, the legislature plans to recess April 7, and to return for a brief session of three or four days in the latter part of the month, whereupon it will adjourn sine die.

1978 Senate Bill 688, which would amend K.S.A. 1977 Supp. 74-4902(14) by making CETA-funded employees ineligible for membership in KPERS, has been passed by both houses of the Legislature and is awaiting signature by the Governor. If enacted into law, it will become effective July 1, 1978.

Yours truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj