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July 9, 1980

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ATTORNEY GENERAL OPINION NO. 80-145

The Honorable Samuel I. Mason
District Magistrate Judge
Bourbon County Court House
Fort Scott, Kansas 66701

Re: Courts--Retirement System for Justices and Judges--
Eligible Members

Synopsis: Wide discretion is vested in the legislature with respect to the conditions of public employment and as to the requirements, classifications, contributions to and benefits conferred by a retirement system. Accordingly, the legislature's exclusion of district magistrate judges from participation in the retirement system for justices and judges is a legitimate exercise of such discretion. It does not effect a discrimination which infringes upon constitutionally protected rights of district magistrate judges, since such discrimination is based upon a difference having a fair and substantial relationship to a legitimate legislative purpose. Cited herein: K.S.A. 1979 Supp. 20-302, 20-302a, 20-302b, 20-334, 20-337, 20-341, 20-353, 20-354, K.S.A. 20-2601, 74-4901; U.S. Const., Amend. XIV.

* * *

Dear Judge Mason:

You have inquired whether district magistrate judges should be included in the retirement system for justices and judges, as established by the provisions of K.S.A. 20-2601 et seq., and amendments thereto, rather than be permitted to become members of the Kansas public employees' retirement system (K.S.A. 74-4901 et seq., as amended). You note that such distinction for magistrate judges was effected at the time of the unification of the district court. The statutory provision whereby

July 9, 1980

such classification is made is subsection (b) of K.S.A. 1979 Supp. 20-341, which states in pertinent part: |

"District magistrate judges may become members of the Kansas public employees' retirement system in the manner provided by law for becoming a member thereof. Associate district judges shall become members of the retirement system for justices and judges, and they shall be subject to and covered by the provisions of article 26 of chapter 20 of the Kansas Statutes Annotated. For such purpose, an associate district judge shall be considered as a district judge."

As a result of the foregoing, all justices and judges in the state judicial system, except district magistrate judges, are members of the retirement system for justices and judges, and you question whether such classification of district magistrate judges constitutes discrimination.

While such separate treatment of magistrate judges with respect to retirement benefits creates a very obvious discrimination, we do not believe such discrimination infringes upon any constitutionally protected rights. The reasonableness of classification, as regards beneficiaries of retirement or pension systems for public officers or employees, was the subject of an annotation in 163 A.L.R. 870 (1946). There, the author states:

"In the few cases decided upon the question the courts have sustained the constitutional validity of statutory provisions relating to classification of beneficiaries of pension or retirement benefits, as against the contention that such provision amounted to unlawful discrimination against persons who would otherwise be entitled to receive the benefits of the fund, or that it constituted class legislation not based on a reasonable ground of distinction. State ex rel. Watson v. Lee (Fla) (reported herewith) ante, 862; Franklin v. Savannah (1945) 199 Ga 426, 34 SE2d 506; Hughes v. Traeger (1914) 264 Ill 612, 106 NE 431." Id.

The relatively few cases concerning this question that have been decided since this annotation have been in accord with this conclusion. See, e.g., Hansen v. Public Employees Retirement Sys. Bd. of A., 122 Utah 44, 246 P.2d 591 (1952); Garrabant v. Pension Commission of Emp. Retire. Sys., 24 N.J. Super. 18, 94 A.2d 211 (1952); Gossman v. State Employees Retirement System, 177 Neb. 326, 129 N.W.2d 97 (1964); Grant v. Multnomah County, 14 Or.App. 78, 511 P.2d 1278 (1973). As noted in Gossman, supra, "courts have repeatedly held a broad legislative discretion over the setting up of retirement plans and over the destiny of the public employee." 129 N.W.2d at 102. "Wide discretion is vested in the Legislature as to the conditions of public employment and as to the requirements, classifications [,] contributions to, and benefits conferred by a retirement act." Id. at 105.

The constitutional issue common to the above-cited cases is whether the classification established by the particular retirement or pension system denies equal protection of the laws, either under the fourteenth amendment to the United States Constitution or under a similar provision of a state constitution. The determination necessary to uphold the classification in light of these constitutional guarantees as to equal protection of the laws is that the classification is reasonable and rests "upon some ground of difference having a fair and substantial relationship to the object of the legislation." 163 A.L.R. at 871. We believe the distinction made by the Kansas legislature between district magistrate judges and all other justices and judges of the state judicial system, as regards retirement benefits, satisfies these criteria.

In our judgment, the distinction regarding retirement benefits is reflective of the fact there are significant differences between district magistrate judges and all other justices and judges in the state judicial system. For example, the statutory qualifications for district magistrate judges are significantly less stringent than those imposed upon other judges of the district court. K.S.A. 1979 Supp. 20-334. Notably, district magistrate judges constitute the only class of judicial personnel who are not required to be regularly admitted to practice law in the State of Kansas. See K.S.A. 1979 Supp. 20-334, 20-337.

Moreover, the jurisdiction of district magistrate judges is considerably inferior to that prescribed for other judges of the district court. K.S.A. 1979 Supp. 20-302, 20-302a, 20-302b. In fact, an appeal from an order or final decision of a district magistrate judge may not be taken to an appellate court. Rather, such appeal must be tried and determined (in some instances, de novo) by a district judge or an associate district judge.

Finally, we note a very apparent legislative intent that district magistrate judge positions should enjoy a considerably less permanent

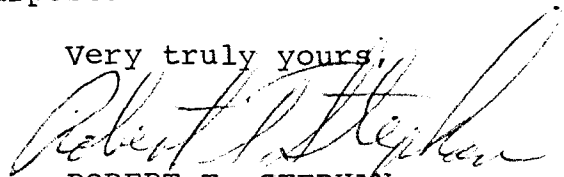
The Honorable Samuel I. Mason
Page Four
July 9, 1980

status than other judicial positions. Such intent is evidenced, in part, by the provisions of K.S.A. 1979 Supp. 20-353(a) and 20-354(a), which provide, respectively, for the conversion of district magistrate judge positions into associate district judge positions or an additional division of the district court, or authorize the elimination of such positions altogether. Although the same type of procedures are to be applied to associate district judge positions, it would appear that the potential for their application is greater for district magistrates.

From the foregoing, it is very apparent that district magistrate judges constitute a separate and distinct class of judges, and that the dissimilarities between this class and any other class of judicial personnel are greater than the dissimilarities among the other classes. For this reason, we find the distinction between district magistrate judges and all other justices and judges in the state judicial system, as regards retirement benefits, to be reasonable. Moreover, the other distinctions among district magistrate judges and other judicial personnel noted above support a conclusion that the distinction regarding retirement benefits is grounded upon a difference "having a fair and substantial relationship to the object of the legislation." In this regard, we discern a legislative purpose to treat judicial personnel having substantially similar attributes and characteristics similarly regarding retirement, and to distinguish the retirement system afforded such personnel from the retirement system available to district magistrate judges whose attributes and characteristics are quite dissimilar, in many respects, from those of other judicial personnel.

Thus, it is our opinion that the exclusion of district magistrate judges from participation in the retirement system for justices and judges does not effect a discrimination which infringes upon constitutionally protected rights of district magistrate judges. Although such distinction is discriminatory, it is not unreasonably so, since it is based upon a difference having a fair and substantial relationship to the underlying legislative purpose.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



W. Robert Alderson
First Deputy Attorney General

RTS:WRA:phf
cc: The Honorable David Prager