

DEPARTMENT OF CORRECTIONS: Teachers employed by State Board  
PUBLIC SCHOOL RETIREMENT SYSTEM: of Training Schools members of  
STATE BOARD OF TRAINING SCHOOLS: Public School Retirement System  
DEPT. OF PUB. HEALTH & WELFARE: and teachers employed by Division  
SCHOOLS: of Inmate Education of Department  
of Corrections to become members  
of Public School Retirement System  
when House Bill No. 258, 70th  
General Assembly, becomes effective

July 31, 1959



Mr. G. L. Donahoe  
Executive Secretary  
Public School Retirement  
System of Missouri  
Jefferson Building  
Jefferson City, Missouri

Dear Mr. Donahoe:

This is in response to your request for opinion dated June 16, 1959, which reads as follows:

"House Bill No. 258 as adopted by the last session of the General Assembly and approved by the Governor repeals Section 169.130, Revised Statutes of Missouri, 1957, and enacts in lieu thereof one new section, No. 169.130.

"Section 169.130 was first adopted in 1947 for the purpose of providing membership in the Retirement System for the full-time certificated teachers employed by the State Board of Training Schools. This section was repealed and a new section enacted in 1953 to provide membership in the Retirement System for the full-time certificated teachers employed by a division of the State Department of Public Health and Welfare. This section provided for the membership of the full-time certificated teachers of a division of the State Department of Public Health and Welfare when the teachers render services in a school whose standards of education are set and which is supervised by a public school officer of the county or by the State Department of Education. Subsection 2 was added to Section 169.130 in 1957, but the content of subsection 1 was not altered.

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"The wording used in the re-enacted section (Section 169.130) leaves question as to whether or not the full-time certificated teachers employed by the Division of Inmate Education of the Department of Corrections will become members of the Public School Retirement System of Missouri by virtue of employment. There also is question as to the status of the certificated teachers employed on a full-time basis by the State Board of Training Schools.

"We are unable to find that there is a statutory requirement that standards of education be set by a public school officer of the county or by the State Department of Education in schools maintained by the Division of Inmate Education of the Department of Corrections, or that there is statutory provision for the supervision of such schools by a public school officer of the county or by the State Department of Education.

"For our guidance in administration, we wish to request an official opinion which will answer the following:

1. Will the certificated teachers who are employed on a full-time basis by the State Board of Training Schools continue to be members of the Public School Retirement System of Missouri by virtue of their employment?

2. Under the provisions of House Bill No. 258, will the certificated teachers who are employed on a full-time basis by the Division of Inmate Education of the Department of Corrections become members of the Public School Retirement System of Missouri by virtue of their employment?"

House Bill No. 258 of the 70th General Assembly, to which you refer, repealing Section 169.130, RSMo, Cum. Supp. 1957, and enacting a new section in lieu thereof, reads as follows:

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"1. Any person, duly certified under the law governing the certification of teachers, employed full time as a teacher by the state board of training schools, by the division of inmate education of the department of corrections, or by a division of the state department of public health and welfare and who renders services in a school whose standards of education are set and which is supervised by a public school officer of the county in which the school is located or by the state department of education is a member of the public school retirement system of Missouri. Any such person who becomes a member before the end of the school year next following the effective date of this section may claim and receive credit for prior service. The contributions required to be made by the member's employer shall be paid from appropriations to the institution by which the member is employed.

"2. Any person, duly certificated under the law governing the certification of teachers, employed full time by any state-wide non-profit educational association or organization serving on an educational professional basis through its membership the active members of the public school retirement system of Missouri or the public school districts maintaining high schools in this state, may be a member of the public school retirement system of Missouri. Any such person who becomes a member before July 1, 1955, may claim and receive credit for prior service. The contributions required to be made by the member's employer shall be paid by the association or organization."

The only change made therein is the addition of the words, "by the division of inmate education of the department of corrections."

In order to arrive at the answers to your questions it is necessary to determine whether the qualifying clause, "and who renders services in a school whose standards of education are set and which is supervised by a public school officer of the county in which the school is located or by the state department

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of education," refers only to those teachers employed by a division of the State Department of Public Health and Welfare or whether it also refers to those employed by the State Board of Training Schools and by the Division of Inmate Education of the Department of Corrections.

In arriving at this determination, we are guided by certain well-established rules of statutory construction. For example, in *State ex rel. Crow v. City of St. Louis*, 174 Mo. 125, 73 SW 623, 628, the court said:

"But it is said that the general rule of law is that, in the absence of punctuation showing a different intent, an exception or proviso in a statute applies only to its immediate antecedent in the statute, and therefore the exception in this section applies only to the fifth class of subjects. Sutherland on Statutory Construction, § 267, thus states the rule: 'Relative and qualifying words and phrases, grammatically and legally, where no contrary intention appears, refer solely to the last antecedent. A proviso is construed to apply to the provision or clause immediately preceding.' But, after referring to the cases illustrative of the general rule, the author, in the same section, adds: 'This principle is of no great force. It is only operative when there is nothing in the statute indicating that a relative word or qualifying provision is intended to have a different effect. And a very slight indication of legislative purpose, or a parity of reason, or the natural and common-sense reading of the statute may overturn it, and give it a more extended application. \* \* \* Qualifying words have been applied to several preceding sections where the nature of the provisions and the obvious sense required it. \* \* \* Where the intention is manifest, a proviso or qualifying words or clauses found in the middle of a sentence may be placed at the end; or, when inserted in one section, they may be applied to the matter of another section.' The many cases cited in the notes to the text afford ample illustration of the many instances

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in which the general rule has found exceptions. In fact, the exceptions have been applied oftener than the rule. Darris' Treatise on Statutes (2d Ed.) p. 600, says: 'When words are at the beginning of a sentence, they may govern the whole. \* \* \* 'When words are at the end of a sentence, they may refer to the whole. Thus, the words, "per legem terrae," in Cap 29 of Magna Charta, being towards the end of the chapter, have been always held to refer to all the precedent matter. But if words are in the middle of a sentence, and sensibly apply to a particular branch of it, can they be extended to that which follows? Agreeably to reason, and in grammatical construction, it would seem not; but, as statutes are read without breaks and stops, it is not at any time clear that words belong to any particular branch of a sentence; it must be collected from the context to what they relate; and they are often, as will be seen, to be read distributively - "reddendo singula singulis." Sedgwick on the Construction of Stats. (2d Ed.) p. 226, says: 'A limiting clause is generally to be restrained to the last preceding antecedent.' The author cites in support of this statement the case of Cushing v. Worrick, 9 Gray, 382, but omits the very important words of that decision which complete the part of the sentence wherein the rule stated is laid down, which are, 'unless there is something in the subject-matter which requires a different construction.' Id. p. 385. But the same author (page 225) says: 'Common sense should prevail over strict grammatical rules, and punctuation should not control. Gyger's Estate, 65 Pa. 311. The punctuation of a statute is not to be considered. Cushing v. Warrick, 9 Gray, 382; Hamilton v. Steamboat Hamilton, 16 Ohio St. 428.'

In State ex rel. Gorzik v. Mosman, Mo. Sup., 315 SW2d 209, 211, the following guides were set forth:

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"When called upon to construe a statute, the court's prime duty is to give effect to the legislative intent as expressed in the statute. To this end we are guided by certain well established and recognized rules, among which are the following: (a) The object sought to be obtained and the evil sought to be remedied by the Legislature; (b) the legislative purpose should be assumed to be a reasonable one; (c) laws are presumed to have been passed with a view to the welfare of the community; (d) it was intended to pass an effective law, not an ineffective or insufficient one; (e) it was intended to make some change in the existing law. Warrington v. Bobb, Mo. App., 56 S.W. 2d 835, 837; 82 C.J.S. Statutes § 316, pp. 544, 545."

Another rule is stated in State v. Eckhardt, 232 Mo. 49, 133 SW 321, 322:

" \* \* \* The great fundamental rule in the construction of statutes is to ascertain and give effect to the intention of the Legislature. For the purpose of discovering the legislative intent, it is proper, and often necessary, to consider the history of the statute, the reason for its enactment, and the prior state of the law on the subject to which the statute relates. \* \* \*"

In construing this statute, we are to consider the qualifying clause, "and who renders services in a school whose standards of education are set and which is supervised by a public school officer of the county in which the school is located or by the state department of education," as referring solely to the last antecedent, i.e., teachers employed by a division of the State Department of Public Health and Welfare unless a contrary intention appears.

Prior to the original enactment of Section 169.130, RSMo, this office rendered an opinion to you, dated August 25, 1947, wherein it was concluded that teachers in the State Training Schools and in the State Sanatorium at Mount Vernon were not members of the Public School Retirement System. Following that, the General Assembly enacted Senate Bill No. 288, 64th General Assembly (Laws of Mo. 1947, Vol. II, p. 325, §15), which became

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Section 169.130, RSMo. That bill, as enacted, provided membership in the Public School Retirement System for certificated teachers employed full time by the State Board of Training Schools without qualification. In 1953, that section was again amended by the addition of the words, "or employed full time as a teacher by a division of the State Department of Public Health and Welfare and who renders services in a school whose standards of education are set and which is supervised by a public school officer of the county in which the school is located or by the State Department of Education." It also added Subsection 2 thereof, not pertinent to this discussion (House Bill No. 64, 67th General Assembly, Laws of Mo. 1953, p. 480). Obviously, the qualifying clause added in 1953 referred only to the teachers employed by a division of the State Department of Public Health and Welfare and not to those employed by the State Board of Training Schools.

In 1955, the 68th General Assembly created a Division of Inmate Education within the Department of Corrections (House Bill No. 377, 68th General Assembly, Laws of Mo. 1955, p. 318, §47). On March 26, 1956, this office rendered an opinion to Honorable James D. Carter, copy enclosed, in which it was concluded that the teachers employed by the Division of Inmate Education of the Department of Corrections were not members of the Public School Retirement System.

The 70th General Assembly has enacted House Bill No. 258, adding to Section 169.130 the words, "by the division of inmate education of the department of corrections."

This history clearly indicates an intention on the part of the Legislature to include the certificated teachers employed full time by the Division of Inmate Education of the Department of Corrections as members of the Public School Retirement System. Conversely, no intention appears therefrom which would lead us to deviate from the general rule that qualifying phrases or clauses refer only to the last antecedent. If this statute were construed otherwise, and if it were said that those certificated teachers employed full time by the Division of Inmate Education of the Department of Corrections were not eligible for membership because the school in which they teach is not supervised by a public school officer of the county in which the school is located or by the State Department of Education, the Legislature would have done a useless thing by adding to this section the words, "by the division of inmate education of the department of corrections." It would not result in any change in the existing law.

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Based upon the various rules of statutory construction above noted and the history of this legislation, we are of the opinion that the qualifying clause above mentioned refers only to those teachers employed by a division of the Department of Public Health and Welfare and not to those employed by the State Board of Training Schools or by the Division of Inmate Education of the Department of Corrections.

CONCLUSION

It is the opinion of this office that certificated teachers employed full time by the State Board of Training Schools will continue to be members of the Public School Retirement System of Missouri and that certificated teachers employed full time by the Division of Inmate Education of the Department of Corrections will become members of the Public School Retirement System of Missouri when House Bill No. 258 of the 70th General Assembly becomes effective.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, John W. English.

Yours very truly,

JOHN M. DALTON  
Attorney General

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Enc.