

SOCIAL SECURITY:  
PUBLIC SCHOOL RETIREMENT SYSTEM:

Legislature only body authorized to fix date on which service in positions covered by Public School Retirement System shall be included for coverage under Social Security Act, subject to referendum, and effective date must be in conformity with federal law.

January 27, 1956

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Mr. Ward E. Barnes  
Chairman, Board of Trustees  
Public School Retirement System  
Room 801, Jefferson Building  
Jefferson City, Missouri

Dear Mr. Barnes:

This is in response to your request for opinion dated January 23, 1956, which reads as follows:

"A referendum of the teacher-members of the Public School Retirement System of Missouri was recently authorized by Governor Donnelly as provided for in Senate Committee Substitute for Senate Bill 186 as enacted by the last session of the General Assembly, and I was designated to supervise the conduct of the referendum. Section 105.355.1. provides that notice of the referendum be given to employees, and that the notice contain or be accompanied by information to inform the employees of the rights which will accrue to them and their dependents and survivors, and the liabilities to which they will be subject if their services are included under an agreement between the Secretary of Health, Education and Welfare, and the State of Missouri.

"In order that the information submitted to the eligible voters be complete with regard to rights and liabilities, it is necessary that we have information relative to the date on which coverage may become effective if the results of the referendum show that a majority of the eligible voters

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have voted to be included under the agreement pertaining to the Old Age and Survivors Insurance System. We are uncertain who is authorized to determine the date on which coverage may become effective if the referendum indicates that coverage is desired. I am, therefore, requesting an official opinion in answer to the following:

1. Who is to determine the date on which service in positions covered by the Retirement System shall be included for coverage under an agreement?

2. What date or dates could be designated for coverage to commence by the person or agency charged with the responsibility of making the determination?"

Prior to the enactment of the 1954 amendments to the Social Security Act, persons in positions covered by retirement systems such as the Public School Retirement System of Missouri were excluded from coverage under the Social Security Act. In the 1954 amendments to Section 218 of that act this exclusion was removed and authorization given to the state to modify its agreement with the federal agency so as to include employees in positions covered by a retirement system if a majority of the eligible employees should vote in favor of such inclusion in a referendum conducted by the Governor or some individual or agency designated by him (Sec. 218(d)(3)).

Pursuant to these amendments, the 68th General Assembly of the State of Missouri enacted Senate Committee Substitute for Senate Bill No. 186 (Secs. 105.300 - 105.370, RSMo, Cum. Supp. 1955). By virtue of Subsection 6 of Section 218(d) of the federal act, the Legislature had the option of treating the employees of each political subdivision (school district) covered by the Public School Retirement System as a separate coverage group. In that event it would not have been necessary for all the school districts of the state to come under social security at the same time because, constituting separate coverage groups, the agreement between the state and federal agency could have been modified if and when individual districts elected to do so.

However, the Legislature, in Senate Committee Substitute for Senate Bill No. 186, elected to treat all employees under the

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Public School Retirement System, with the exception of state colleges, as one coverage group and authorized the conducting of a state-wide referendum among all the eligible employees of the system. Regardless of what argument we might advance for the proposition that each district should be allowed to determine the effective date on which coverage under the Social Security Act would be extended to its employees, the fact remains that coverage can become effective only when the federal agency approves a modification to its agreement with the state. We have been advised by the regional attorney for the Department of Health, Education and Welfare (see attached letter) that since the Legislature has elected to treat the entire retirement system as one coverage group, the same effective date must be made applicable to all school districts of the state. Simply stated, if the modification of the state's agreement with the federal agency does not contain the same effective date for all school districts it will not be accepted.

Since the same effective date must be made applicable to each district, we arrive at your first question, i.e., who can fix this date?

Without prolonging this dissertation, let it suffice to say that no authority is vested in any person or any agency to dictate to the several school districts of this state that they shall extend social security coverage to employees under the Public School Retirement System at any date. School districts are creatures of the Legislature, amenable to its will, and in our opinion the Legislature is the only body clothed with the authority to fix the date on which service in positions covered by the Public School Retirement System shall be included for coverage under the Social Security Act, subject, of course, to the referendum.

The agreement between the state and the federal agency must be in conformity with the federal law. Therefore, the answer to your second question is contained in the 1954 amendment to Section 218(f) of the Social Security Act:

"(f) Any agreement or modification of an agreement under this section shall be effective with respect to services performed after an effective date specified in such agreement or modification; except that -

(1) in the case of an agreement or modification agreed to prior to 1954, such date may not be earlier than December 31, 1950;

(2) in the case of an agreement or modification agreed to after 1954 but prior to 1958, such date may not be earlier than December 31, 1954; and

(3) in the case of an agreement or modification agreed to during 1954 or after 1957, such date may not be earlier than the last day of the calendar year preceding the year in which such agreement or modification, as the case may be, is agreed to by the Secretary of Health, Education, and Welfare and the State."

#### CONCLUSION

It is the opinion of this office that the Legislature is the only body authorized to fix the date on which service in positions covered by the Public School Retirement System shall be included for coverage under the Social Security Act, subject, of course, to referendum of the eligible employees, and such effective date must be in conformity with federal law.

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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