

February 24, 1969



OPINION NO. 72  
Answered by Letter  
Culver

Dr. Earl E. Dawson, President  
Lincoln University  
Jefferson City, Missouri 65101

Dear Dr. Dawson:

This is in response to your request for an opinion of this office regarding the proposal to establish a retirement, death and disability program for the employees of Lincoln University similar to the one in effect at Missouri University. You ask us the following:

- (1) "Does the Lincoln University Board of Curators have the power and authority to set up such a plan?"
- (2) "What procedural steps are necessary in effecting the transfer of membership of Lincoln University employees from the State Retirement System to a Lincoln University retirement system?"

In reply to your first question, it is our opinion that your Board of Curators has the power and authority to establish such a retirement program for Lincoln University employees. This is based on the fact that Section 172.300, RSMo 1959, which provides the Curators of the University of Missouri with retirement program authority, is in effect incorporated by reference into the authority given your Board under the provisions of Section 175.040, RSMo 1959, which provides that your "powers, authority, responsibilities, privileges, immunities, liabilities and compensations" shall be the same as those of the University of Missouri. We refer you on this point to two previous opinions of this office in response to your inquiries: No. 21, dated December 10, 1957, and No. 460, dated November 26, 1963, copies of which are enclosed.

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Regarding your second question, we refer you to a previous opinion of this office, No. 51, rendered to the Honorable Robert R. Welborn, January 18, 1962 (copy enclosed), which basically held that the University of Missouri could "amend" its retirement plan by establishing a separate one of their own, and that University employees formerly belonging to the State Employees' Retirement System (Sections 104.310 - 104.550, RSMo 1959, RSMo Cum. Supp. 1967) thereby terminated their membership in the state system, with certain exceptions as noted in the opinion. Clearly, Lincoln University has the same authority, through its Board of Curators, to establish an employees' retirement plan.

Our office has previously held that the General Assembly may, pursuant to Article VI, Section 25, Constitution of Missouri, appropriate money to the Board of Curators at Missouri University which may be used at the discretion of the Board for providing retirement benefits for University employees. See Opinion No. 209, Mann, dated August 15, 1966, a copy of which is enclosed. Also enclosed is a copy of a previous opinion of this office, No. 347, Bode, dated August 30, 1966, which provides that a member of the Missouri State Employees' Retirement System may withdraw his contributions upon written request for refund to the Board of Trustees.

It is therefore the opinion of this office that Lincoln University, through its Board of Curators pursuant to Sections 175.040 and 172.300 RSMo 1959, has the authority to establish a retirement, death and disability program for the employees of Lincoln University, which could be paid for from appropriated state funds. It is further our opinion that the only procedural step necessary to transfer membership of Lincoln University employees from the state retirement system to the Lincoln University retirement system, in accordance with the previous opinions construing the state retirement system provisions of Chapter 104, RSMo 1959 referred to and enclosed herein, is for the employees with less than fifteen years of service to request in writing that their funds be withdrawn, with interest, from the Missouri State Employees' Retirement System; employees with more than fifteen years of service may elect to leave their funds on deposit with the State System, thus continuing as a "member" of the system to the extent that they have already

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contributed, in anticipation of receiving those benefits to which their previous contributions may entitle them when they reach statutory retirement age.

Very truly yours,

JOHN C. DANFORTH  
Attorney General

Enclosures: Opinion No. 21, Dawson, 12/10/57  
Opinion No. 460, Dawson, 11/26/63  
Opinion No. 51, Welborn, 1/18/62  
Opinion No. 209, Mann, 8/15/66  
Opinion No. 347, Bode, 8/30/66