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STATE OF ARKANSAS
OFFICE OF THE ATTORNEY GENERAL
JUSTICE BUILDING, LITTLE ROCK 72201

(501) 371-2007

Opinion No. 86-298

September 23, 1986

Mr. Winford Clardy
Executive Director
Teacher Retirement System
Education Annex
State Capitol Grounds
Little Rock, AR 72201

Dear Mr. Clardy:

This is in response to a request for an opinion by your predecessor Herbert Blanchard.

The request cited various facts which will be summarized. A teacher was employed at University of Arkansas at Monticello (hereinafter UAM) and was a member of the Teacher Retirement System (hereinafter TRS) prior to and through part of July 1, 1971. The teacher was not employed or a member of any state retirement system from then until September, 1972 when she returned to work at University of Arkansas at Monticello at which time she was placed in the University of Arkansas Retirement System (hereinafter UARS) by University of Arkansas at Monticello officials. She subsequently was employed in other schools and agencies covered by the TRS. She requested and received a refund of the contributions to UARS. She now wants to purchase previous service credit with TRS for the 2 years at University of Arkansas at Monticello when a member of the UARS.

Your questions are as follows:

- 1) Is this teacher eligible to purchase service credit with the Teacher Retirement System under the conditions described above?
- 2) Can the Teacher Retirement System legally accept back contributions and credit her with this 2 years of service credit under these circumstances?

Several sections of the statutes must be considered. First Ark. Stat. Ann. §80-2889 (Repl. 1980) states that employees of Arkansas Agricultural and Mechanical College (now UAM)

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who were participants making regular contributions to the Teacher Retirement System on July 1, 1971 shall continue to participate in that program. Persons who were first employed on and after July 1, 1971 shall be eligible to participate in UARS.

Ark. Stat. Ann. §80-2889.1 provides a procedure whereby a UAM employee can give notice to terminate participation in TRS and elect to participate in UARS. However, this provision was not enacted until 1976 and was not applicable to any change between systems in 1971. No other provision for change from TRS to UARS applicable in 1971 has been found.

Pursuant to the law in 1971, a teacher in a State institution of higher education, Ark. Stat. Ann. §80-1437(g)(I)-(IV) (Repl. 1960), was required to be a member of TRS. Ark. Stat. Ann. §80-1439 (Repl. 1960).

Accordingly, under the facts provided, the teacher was required to be a member of TRS, and no transfer provision between systems existed. You state that the teacher was enrolled in UARS upon reemployment at UAM in 1972 even though she had been employed there previously. The word "first" in §80-2889 appears to mean the original employment at that school. See Black's Law Dictionary. Because her original employment occurred prior to July 1, 1971, it appears she should have been placed in TRS upon reemployment at UAM in 1972. You state that the decision to place her in UARS was that of UAM officials. Despite that error she was apparently in a TRS covered employment at UAM from 1972-1974.

At this date the teacher has withdrawn contributions from and thereby waived credit under UARS. She wants to purchase credit for that same service in TRS.

Ark. Stat. Ann. §80-1440.3(a)(1985 Supp.) provides in part as follows:

* * *

In addition to such forfeited service credit, such active member shall receive credit for his other previous teaching service after July 1, 1937, upon his paying to the System the member contributions in effect during such previous teaching service together with regular interest from the dates of such service to the date of payment; provided, for such previous teaching service rendered before July 1, 1971, service credit

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shall be permitted for teaching service in a fiscal school year only if at least 120 days of teaching service were rendered in such fiscal school year. Effective July 1, 1984, to establish credit for such previous service, a member must pay to the System both member and employer contributions plus regular interest from the dates the contributions would normally have been received by the System to the date of such actual payment. (Emphasis supplied)

* * *

This provision permits a member of TRS to purchase credit for prior service. The prior service apparently must have been in employment covered by TRS because of the mandatory payment of employer and member contributions plus interest from dates same would ordinarily have been received by TRS.

Ark. Stat. Ann. §80-1440.3(d) does not appear applicable to these facts because the teacher did not cease to be in a system covered employment or elect to transfer to an alternate plan, she was erroneously placed in another system by UAM officials.

Accordingly, it appears that this teacher was in a system covered position upon her reemployment at UAM in 1972-1974 despite her erroneous placement in UARS. It is my opinion that pursuant to Ark. Stat. Ann. §80-1440.3(a)(1985 Supp.), the teacher is eligible to purchase service credit for this period and that the system can legally accept the payment for back contributions.

The foregoing opinion which I hereby approve was prepared by Assistant Attorney General Thomas S. Gay.

Sincerely,


STEVE CLARK
Attorney General

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