

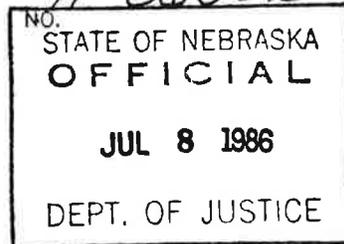
DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

TELEPHONE 402/471-2682 • STATE CAPITOL • LINCOLN, NEBRASKA 68509

ROBERT M SPIRE
Attorney General
A. EUGENE CRUMP
Deputy Attorney General

July 7, 1986



SUBJECT: Reinstatement of a disability beneficiary to the School Retirement System.

REQUESTED BY: Jack E. Nellson, Director, Nebraska Retirement Systems.

WRITTEN BY: Robert M. Spire, Attorney General, Fredrick F. Neid, Assistant Attorney General.

This is in response to your request for an opinion of the Attorney General concerning whether a disabled beneficiary may again become a member of the School Retirement System.

By letter dated June 4, 1986, Charles R. Bruno, through counsel, has requested that he be permitted to re-establish his Retirement Systems Account. Mr. Bruno was a teacher in the Nebraska School System until retirement due to disability in 1980 pursuant to his formal written request. Mr. Bruno now desires to again become a member of the School Retirement Systems by repaying the amounts withdrawn as disability benefits to the Public Employees Retirement Board. It is our understanding that Mr. Bruno has not returned to employment within the state school system and is not otherwise employed.

There are two Nebraska statutes which basically provide for "reinstatement" to the School Retirement System and set forth the necessary criteria. Neb.Rev.Stat. §79-1514.01 (Reissue 1985) generally provides that a retired beneficiary may again become a member of the Retirement System who returns to employment but excepts members retired under §§79-1523 to 79-1526. Neb.Rev.Stat. §§79-1523 to 79-1526 (Reissue 1981) generally provide for the application, qualification, and payment of retirement disability benefits.

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Neb.Rev.Stat. §79-1526 (Reissue 1981) states:

Should a disability beneficiary, under the age of sixty-five years, be restored to active service as a school employee or should the examining physician certify that the person is no longer disabled for service as a school employee, his school or disability retirement allowance shall cease. If he again becomes a school employee, he shall become a member of the retirement system. Any prior service certificate, on the basis of which his creditable service was computed at the time of his retirement for disability, shall be restored to full force and effect upon his again becoming a member of such retirement system.

(Emphasis added.)

Sections 79-1514.01 and 79-1526 set out the criteria upon which a beneficiary receiving benefits may again become a member of the School Retirement System. Both sections provide that a beneficiary commence employment as a school employee as a condition precedent to becoming (again) a member of the School Retirement System. The statutes neither contemplate nor provide for other circumstances or conditions which authorize or permit a beneficiary to become a member of the School Retirement System.

Accordingly, a disabled beneficiary shall again become a member of the School Retirement System only if the beneficiary recommences employment as a school employee. Since Mr. Bruno has not recommenced school employment within the state, he is precluded from reinstatement (becoming a member) in the School Retirement System.

Sincerely,

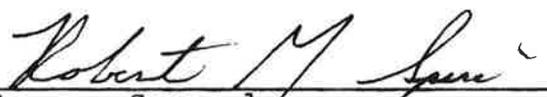
ROBERT M. SPIRE
Attorney General



Fredrick F. Neid
Assistant Attorney General

FFN:pjs

APPROVED:


Attorney General