

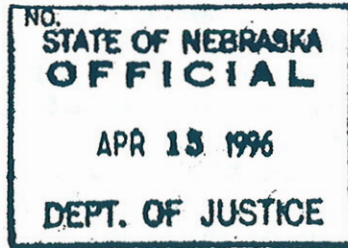


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STEVE GRASZ
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DEPUTY ATTORNEYS GENERAL

DATE: April 11, 1996

SUBJECT: Retirement System for Nebraska Counties;
Eligibility for membership

REQUESTED BY: James S. Cashin, Director
Public Employees Retirement Systems

WRITTEN BY: Don Stenberg, Attorney General
Fredrick F. Neid, Assistant Attorney General

This is in response to your request for an Opinion of the Attorney General regarding eligibility for membership of an elected county official in the Retirement System for Nebraska Counties. The issue arises because of the dual employment of the employee as a school employee and as an elected county official. Under the facts accompanying your request, you indicate that the county official "is also a member of the School Retirement System." The question you appear to ask is whether an elected county official who is a contributing member of the School Retirement System may also participate as a member of the Retirement System for Nebraska Counties. It is our conclusion that a county official who is making contributions to the School Retirement System is ineligible for membership in the Retirement System for Nebraska Counties.

The Retirement System for Nebraska Counties ("Retirement System") is established by the County Employees Retirement Act, Neb. Rev. Stat. §§ 23-2301 to 23-2332 (1991, Cum. Supp. 1994, and Supp. 1995) and membership is governed by provisions of the Retirement Act. The Retirement Act contemplates that a county employee who is a contributing member of the School Retirement System shall not participate in the Retirement System for Nebraska

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Counties. Neb. Rev. Stat. § 23-2306 (Supp. 1995) in material part provides:

(1) The membership of the retirement system shall be composed of (a) all full-time employees who have been employees for a period of twelve continuous months, except that elected officials shall be eligible for membership on taking office, and (b) all part-time employees who have attained the age of twenty-five and have been employed for a total of twelve months and who exercise the option to join the retirement system. An employee who exercises the option to join the system shall remain in the system until termination or retirement. . . .

The term, "employees," is defined for purposes of the Retirement Act. Neb. Rev. Stat. § 23-2301 (Supp. 1995) in relevant part states:

(1) Employees shall mean all persons or officers who are employed by a county of the State of Nebraska for twenty or more hours per week and who have completed at least twelve months of continuous service at any time, persons employed as provided in section 2-1608, all elected officers of a county, and such other persons or officers as are classified from time to time as permanent employees by the county board of the county by whom they are employed, except that employees shall not include judges, persons making contributions to the School Retirement System of the State of Nebraska, or nonelected employees and nonelected officials of any county having a population in excess of one hundred fifty thousand inhabitants; . . .

(Emphasis added).

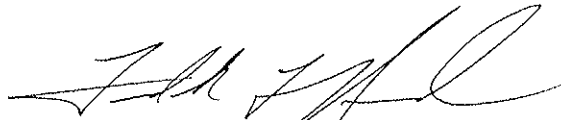
By the express provisions of section 23-2301, persons making contributions to the School Retirement System are not employees as that term is used and defined in the Retirement Act. Sections 23-2301 and 23-2306 are necessarily considered in pari materia. In construing a statute, the legislative intention is to be determined from a general consideration of the whole act with respect to which it applies and the particular topic under which the language in question is found, and the intention deduced from the whole will prevail over that of a particular part considered separately. *Hollstein v. First National Bank of Aurora*, 231 Neb. 711, 437 N.W.2d 512 (1989); *Anderson v. Peterson*, 221 Neb. 149, 375 N.W.2d 901 (1985). The provisions of section 23-2301 and 23-2306 are

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unambiguous and we believe the legislative intention is clearly expressed, that is, persons contributing to the School Retirement System are not deemed to be employees for purposes of the County Employees Retirement Act. Accordingly, a county employee making contributions to the School Retirement System is ineligible for membership in the Retirement System for Nebraska Counties.


Sincerely yours,

DON STENBERG
Attorney General



Fredrick F. Neid
Assistant Attorney General

Approved By:



Attorney General

