



*Working together and representing over 217,000 Missouri educational employees and 542 school districts.*

November 3, 2008

Dear Elected Official:

The purpose of this letter is to inform you of a recent change in position by the Missouri State Social Security Administrator and the Social Security Administration (“SSA”) that could have a detrimental effect on the retirement of thousands of Missouri’s public school employees.

We would urge you to ask the Social Security Administration and the Missouri State Social Security Administrator to review their change in position and continue to allow all PSRS members to be exempt from Social Security coverage. Social Security Administration and the Missouri State Social Security Administrator need to delay this decision until at least July 1, 2010, as this change has a major impact on the career decisions of Missouri educators. More time is needed to fully understand exactly which employees are affected by this decision and the impact this decision will have on their future retirement income.

## **Brief History**

In 1956, the members of the Public School Retirement System of Missouri (“PSRS”) voted in a referendum to be excluded from Social Security coverage. Since that time, nearly all members of PSRS have not participated in Social Security. The benefits provided by PSRS provide a benefit that replaces Social Security benefits.

Pursuant to Missouri statute, PSRS currently covers all employees of Missouri public school districts who possess a certificate issued by the Department of Elementary and Secondary Education (“DESE”) and who work at least seventeen (17) hours on a regular basis.

Under Missouri statutes in existence prior to August 13, 1984 PSRS covered the following positions: “teacher, teacher-secretary, substitute teacher, supervisor, principal, supervising principal, superintendent or assistant superintendent, nurse, or librarian” who held a DESE-issued certificate.

## **Roles of SSA, State Social Security Administrator, and PSRS**

SSA regulations require that each state designate a State Social Security Administrator, who acts for the state with respect the state’s 218 agreement. In Missouri, the State Social Security Administrator is employed within the State Office of Administration (“OA”). The State Social Security Administrator’s responsibilities include:

- Maintaining physical custody of the Section 218 Agreement and its modifications;
- Providing copies of all modifications to active political subdivisions with explanations of any changes that have been overridden by subsequent changes to federal law;
- Taking appropriate steps to execute modifications to the original agreement that include additional coverage groups, correcting errors in modifications or identifying additional political subdivisions that join a covered retirement system;
- Serving as an information liaison for federal, state and local agencies in the education and training of public employers;
- Providing the SSA with notice and evidence of the legal dissolution of covered state or political subdivision entities;
- Providing guidance to the state’s governmental employers on issues related to Section 218 coverage; and
- Working with SSA and the Internal Revenue Service in addressing coverage and taxation questions related to the agreement and modifications.

PSRS determines whether a school district employee meets PSRS membership eligibility. However, PSRS does not have the authority to determine whether a school district employee is covered by social security. That is the role of the State Social Security Administrator. PSRS has, in the past, received information regarding social security coverage from the State Social Security Administrator and passed that information along to PSRS-covered school districts.

## **Previous Guidance from SSA and the State Social Security Administrator**

Several times in the past, and as recently as 2006, the SSA issued guidance to the Missouri State Social Security Administrator (OA) stating that school district employees *working in any*

*capacity* who are PSRS members are excluded from social security coverage. The State Social Security Administrator then passed that guidance along to Missouri school districts.

### **Recent Change in Position by SSA and the State Social Security Administrator**

According to October 22, 2008 memoranda recently received from the State Social Security Administrator, the SSA and the State Social Security Administrator have asserted that only those positions that were included in PSRS at the time the school district entered into a “Section 218 agreement” are excluded from Social Security.

Section 218 of the Social Security Act (“Act”) allowed states, effective January 1, 1951, to enter into voluntary agreements (known as “218 Agreements”) with the SSA for social security coverage. Once the federal-state 218 Agreement is in place, each state then enters into voluntary agreements (also known as “modifications”) with its political subdivisions to provide the social security coverage.

As indicated above, the statutory definition of “teacher” for purposes of PSRS membership before August 13, 1984 included: “teacher, teacher-secretary, substitute teacher, supervisor, principal, supervising principal, superintendent or assistant superintendent, nurse, or librarian” who held a DESE-issued certificate. Since most Missouri school districts entered into Section 218 agreement before August 13, 1984, the new OA and SSA position will affect nearly all Missouri school districts.

According to OA’s October 22, 2008 memoranda, for school districts that executed §218 agreements before August 13, 1984 (nearly all of them), the only employees *excluded* from social security coverage are PSRS members working in the PSRS positions of “teacher, teacher-secretary, substitute teacher, supervisor, principal, supervising principal, superintendent or assistant superintendent, nurse, or librarian” *as those positions are described by OA (not PSRS)*.

The SSA and the State Social Security Administrator have further defined “teacher, teacher-secretary, substitute teacher, supervisor, principal, supervising principal, superintendent or assistant superintendent, nurse, or librarian” in a very restrictive manner that will result in thousands of PSRS-covered public school employees being required to contribute to Social Security.

### **PSRS Law Relating to Social Security Coverage**

Missouri statutory sections 169.070.9 and .10 state that PSRS members who contribute to social security with “state and local tax funds” pay two-thirds the normal contribution amount and receive two-thirds the benefit for those years that they contribute to social security.

Therefore, the new position taken by the SSA and the State Social Security Administrator will result in PSRS members who do not hold positions included in the definitions above contributing two-thirds the normal contribution rate to PSRS and receiving two-thirds the normal benefit amount for those years that they contribute to social security.

SSA and the State Social Security Administrator indicate that they will apply their new stance prospectively. Therefore, affected positions would receive full PSRS benefits for years that full contributions were made, but would begin making two-thirds or the normal PSRS contributions

upon implementation of the new OA/SSA position and receive two-thirds of the normal PSRS benefit for years that two-thirds contributions were made.

Despite the possible prospective application of the new SSA position, given the number of potentially affected PSRS members, a class action lawsuit is possible if not probable.

Admittedly, a few PSRS members may want Social Security coverage and may want to pay two-thirds of the normal PSRS contribution rate. However, that position would seem to be limited because the total contribution to Social Security and PSRS would exceed the full PSRS contribution amount and the Social Security benefits provided are, by almost any measure, inferior to those of PSRS.

We would urge you to ask the Social Security Administration and the Missouri State Social Security Administrator to review their change in position and continue to allow all PSRS members to be exempt from Social Security coverage.

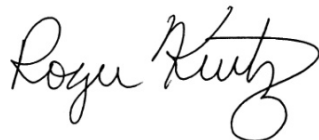
Tom Sadowski, Division of Accounting, Missouri Office of Administration is the State  
Social Security Administrator  
[Tom.Sadowski@oa.mo.gov](mailto:Tom.Sadowski@oa.mo.gov)  
573-751- 4013

Vandee DeVore, Division of Accounting, Missouri Office of Administration  
[Vandee.DeVore@oa.mo.gov](mailto:Vandee.DeVore@oa.mo.gov)  
573-751-3289

Respectfully submitted,

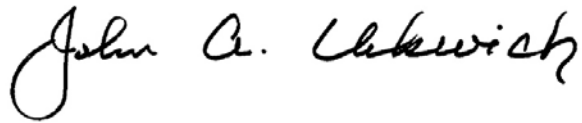
M. Steve Yoakum,  
Executive Director  
PSRS/PEERS of Missouri

Mike Wood,  
Associate Executive Director Education Policy  
Missouri State Teachers Association



Roger Kurtz,  
Executive Director  
Missouri Association of School Administrators

Dr. Carter D. Ward,  
Executive Director  
Missouri School Board Association



John Urkevich, Ed.D.,  
Executive Director  
Cooperating School Districts of Greater St. Louis



Chris Guinther,  
President  
Missouri National Education Association



Jim Kreider,  
Executive Director  
Missouri Retired Teachers Association



Gayden Carruth,  
Executive Director  
Cooperating School District of Greater Kansas  
City



Scott Ciafullo,  
President  
AFT of Missouri



Dr. Lela Kosteck Bunch,  
Executive Director  
Missouri School Counselor Association

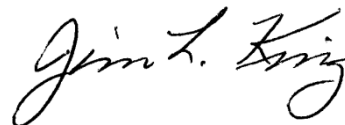


Dr. Ray V. Patrick,  
Executive Director  
Missouri Association of Rural Education



Faye K. Peters,  
Executive Director  
Missouri Association of Elementary School  
Principals

Bob Phillips,  
Executive Director  
Missouri Association of School Business  
Officials



Jim L. King  
Executive Director  
Missouri Association of Secondary School  
Principals