

Opinion No. 48-5133

March 4, 1948

BY: C. C. McCULLOH, Attorney General

TO: Miss Florence Perkinson, Supt. Girls' Welfare Home Albuquerque, New Mexico

{*134} We are in receipt of your letter of February 28, 1948 in which you state that it is the desire of the Girls' Welfare Home to come under the Teachers' Retirement Act as they are authorized to do by Chapter 74, Laws of 1947.

You ask whether it will be possible for that institution to come under the Teachers' Retirement Act without also being required to come under the Public Employees' Retirement Association, which was created by Chapter 167, Laws of 1947.

By Section 2, paragraph 3 of this chapter, cities, counties and municipalities are authorized to exempt themselves from the act. By Section 1, paragraph 2, a public employee within the meaning of the act is so defined as to except employees of the educational institutions within the state which have an established retirement plan for such employees. In view of the fact that the Girls' Welfare Home is not an educational institution, you do not come under that section.

In view of the foregoing, it is my opinion that even though the Girls' Welfare Home elects to come under the Teachers' Retirement Act, it will still come within the Public Employees' Retirement Act.

{*135} Your attention, however, is directed to Section 2, Paragraph 3 which provides that any person who is a public employee at the time the act becomes effective may be exempt from membership by filing an application for exemption.

As to any employee who was employed prior to June 13, 1947 and who has made application for exemption, the act would not apply. It may be that although it will work some hardship for the time being, the Girls' Welfare Home could proceed under both plans, as most of its employees had been employed prior to June 13, 1947. Then, at the next Legislature an amendment could be proposed to exempt the Home from the act.

Trusting the foregoing fully answers your inquiry, I am

By ROBERT W. WARD,

Asst. Atty. General