

Opinion No. 49-5196

February 17, 1949

BY: JOE L. MARTINEZ, Attorney General

TO: Mr. Charles L. Rose, Chairman Teachers' Retirement Board Santa Fe, New Mexico

{*17} I am in receipt of your letter of February 9, 1949, inquiring into the rights of the four teachers at the Industrial School at Springer under the provisions of the Teacher Retirement Law.

In 1947 the Legislature made the New Mexico Industrial School and the Girls' Welfare Home "school districts" and provided that they "shall participate in the 'State Equalization Fund' as if they were in fact school districts except that they shall receive no allowance on account of school bus transportation costs". (Section 55-644, 1941 Compilation, New Mexico Statutes Annotated.)

The 1947 Legislature also amended Section 55-1119 and in the cases of institutions, required that three percent of the institution's payrolls of the regular full time employees during the preceding fiscal year be paid into the Teacher Retirement Fund. The act further provided that the institution "shall notify the State Retirement Board of its desire to participate in this Retirement Plan", and failure to do so by June 30, 1948 was deemed an election not to participate.

The certified teachers at the Springer Industrial School are paid out of the State Public School Equalization Fund. The other employees of the Industrial School are paid out of legislative {*18} appropriations. The effect is to create two classes of employees in the institution -- the teachers who are employees of the school district, and all other employees are employees of the institution.

Section 55-1114 states that the "board of education, any municipality, county, independent school district" shall retire from active service any teacher who is a full time employee and otherwise eligible.

It is the opinion of this office that the certified teachers at Springer are employees of an independent school district and their share of the retirement fund was computed under the provisions of Section 55-1119 of the 1941 Compilation. Since they were employees of a school district and were paid out of the State Equalization Fund, it was not necessary for the institution to deduct three percent of its payroll based on the preceding fiscal year.

The four teachers at Springer Industrial School, therefore, are eligible for retirement under the Teachers' Retirement Act and all other employees of the institution are barred from participation in the Teachers' Retirement Act because of their failure to come within the scope of the act before June 30, 1948.