

Opinion No. 49-5266

December 9, 1949

BY: JOE L. MARTINEZ, Attorney General

TO: Mr. Charles L. Rose Superintendent of Public Instruction Department of Education Santa Fe, New Mexico. Attention: Floyd Santistevan, Director Teacher Retirement.

{*112} I am in receipt of your letter of December 5, 1949, and the enclosed letter from Mr. George W. Gardiner to Mr. Floyd Santistevan, Director, Teacher Retirement. You have requested an official opinion as to the legality of the payments to the State Retirement Board of 3% annual contributions in behalf of your nonstudent hourly employees who are working for New Mexico College of Agriculture and Mechanic Arts, on projects paid for by federal government contracts.

The issue is whether the following are considered "regular full time employees" under the provisions of Chapter 50 of the Laws of the State of New Mexico, 1945, (Sections 55-1114 to 55-1119. inclusive, N.M.S.A., 1941, as amended) which is the new retirement act:

Non-student hourly employees who normally work a 40 hour week instead of the usual 44 hour week because of the fact that they are paid from federal government contract funds. These contracts specifically state that the Walsh-Hesly Act applies to such employees. This means that 40 hours is the regular work week and that overtime rates must be paid for hours in excess of forty. Such overtime is authorized only on the basis of emergency.

No exact definition can be given of the term "regular full-time employee" which is used several times in Chapter 50. Each case would have to be determined on its individual circumstances. It is, however, apparent that by the term "regular full-time employee" the Legislature intended to distinguish such employees from special employees, temporary employees, and part-time employees. In the case of *Cote v. Bachelder-Worcester Co.* (N.H.), 160 Atl. 101, the Court said.

"In an industrial community, term "full-time" has acquired definite significance recognized by popular usage. Like terms 'part time' and 'over time', it refers to customary period of work; and all three terms assume that a certain number of hours per day or days per week constitute respectively a day's or week's work within a given industry or factory. 'Full time' in Compensation Law signifies normal and customary period of labor per day or week for kind of work employee performs."

See also *American Tobacco Co. v. Grider*, 47 S.W.2d 735, 243 Ky. 87, where the Court held that the words "full time" meant a full working day for six days every week of the year, since such was the customary period of work of employees of the industry. Also

see *Aebli v. Board of Education*, 145 P.2d 601, 619; *McCarty v. School District*, 225 P. 835, 75 Colo. 305.

Thus, it appears that as used in this statute, the Legislature contemplated an employee as being a "regular full time employee" if he worked the hours in the day, the days in the week, and the months in the year customary to school employment.

It is my opinion that the above classified employees are "regular full time employees" as contemplated by the Legislature and the { *113 } payment hereinbefore referred to are within the scope of said act.