

Opinion No. 49-5267

December 9, 1949

BY: JOE L. MARTINEZ, Attorney General

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

{*113} 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 on behalf of your non-student 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 are appointed to fill positions which at the time of their appointment are considered to be permanent, but which are abolished before the end of one year due to termination of a government contract or due to changes in the work to be done under a government contract. In such cases we have paid the 3% retirement contribution for the actual period of employment.

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" {*114} if he worked the hours in the day, the days in the week, and the months in the year customary to school employment.

The question from the above factual situation does not center around what occurs after the employee entered upon their employment but evolves itself solely on the nature of their appointment at the time they entered the employ of the college.

From the above stated facts, it is my opinion, that the employees are "regular full time employees" as contemplated by the Legislature and that the payments above referred to are within the scope of said act.