

Opinion No. 50-5273

January 3, 1950

BY: JOE L. MARTINEZ, Attorney General

TO: Floyd Santistevan, Director Teacher Retirement Department of Education Santa Fe, New Mexico

{*119} I received your recent letter propounding several questions pertaining to the Teachers' Retirement Law.

Your questions are as follows:

Question 1. Does a person who is retired for physical disability, age, or completion of tenure of service as provided by law, receive any benefits from Teachers' Retirement Law if his United States Armed Services retired pay is in excess of his Teachers' Retirement?

Question 2. Does a person who is retired for physical disability, age, or completion of tenure of service as provided by law, receive any benefits from Teachers' Retirement if he receives disability compensation from Federal or another state government for the remainder of his life?

Question 3. Are the National Social Security Law benefits to be considered within the purview of Section 55-1118 N.M.S.A. 1941, relating to "retirement or old age benefit law"?

Question 4. Is the Federal Civil Service retirement pay to be considered within the purview of Section 55-1118 N.M.S.A. 1941, relating to "retirement or old age benefit law"?

Section 55-1118 N.M.S.A. 1941 states:

"If any person retired under the provisions of this act shall also be entitled to benefits under any state or national retirement or old age benefit law, then the amount to be paid such person under this act shall be only the difference between the amount received under such other retirement or old age benefit law and the amount provided in this act."

Attorney General Opinion No. 5169 states as follows:

"Retirement or old age benefit constitutes a pension, which is defined in 48 Corpus Juris, Pensions, Section 1, as "a periodical allowance of money granted by the government in consideration of services rendered or of loss or injury sustained in the public service."

In 38 U.S.C. Sec. 700, it is provided that " * * * monetary benefits other than retirement pay for service connected disability or death shall be designated 'compensation' and not 'pension'. Therefore, since Sec. 55-1118, as amended, contemplates reduction in teacher retirement pay where { * 120 } a **pension** is received by the retired teacher from any other source, because the words 'pension' and 'compensation' are not synonymous. See Dickey vs. Jackson, 181 Iowa 1155, 165 N.W. 367, where the court held: 'The words 'pension' and 'compensation' are not synonymous * * * the latter is ordinarily a gratuity from the government or some of its subordinate agencies in recognition of, but not in payment for, past services.' Further, even if the payments in question here were to be classified, as a pension, they would still not constitute a retirement or old age benefit law since the compensation is rendered by the Federal Governments under the term of Title 38, U.S.C. which is a veteran's benefit law. It is not a retirement law or an old age benefit law. There is no age requirement as a basis for receiving this compensation or pension, and neither is length of service a factor."

Also, in Geddes v. U.S., 38 Ct. of Cls. 428, the court states that an officer on the retired list owes no service to the government and his retired pay is an honorary form of pension.

It is evident from the above citations that the controlling factor to be considered as compensation rather than pension is the fact that it is a gratuity from the government in recognition of, but not in payment for, past services.

It is my opinion that the answers to the foregoing questions are as follows:

Question 1. Armed Services Retired pay is not within the purview of § 55-1118 and it is not to be deducted from Teachers' Retirement pay.

Question 2. Disability compensation is not within the purview of § 55-1118 and it is not to be deducted from Teachers' Retirement pay.

Question 3. That the "Social Security" providing for old age and survivors insurance benefits payments, only, is within the purview of § 55-1118 relating to "National Retirement or old age benefit law, and therefore that sum received from "Social Security" must be deducted from the Teacher's Retirement pay.

The remaining provisions of the Social Security Law are not within the purview of § 55-1118 relating to National Retirement or Old Age Benefit Law and therefore are deductible from Teachers' Retirement Pay.

Question 4. That the retirement pay received from Federal Civil Service is within the purview of § 55-1118 and the above must be deducted from Teachers' Retirement pay.

In your letter, you request advice on the issue of contributing to said Teachers' Retirement Fund by colleges, when it is apparent that certain persons cannot possibly benefit from said Teachers' Retirement Act.

The statute, although it may not have contemplated some of the exceptions to the above law, is specific as to method of contribution. My recommendation would be for you to propose an amendment to said act at the next Legislature to provide for the exceptions above referred to.