Opinion No. 51-5337

February 27, 1951

BY: JOE L. MARTINEZ, Attorney General

TO: Epigmenio Ramirez, Secretary Public Employees Retirement Commission State Capitol Santa Fe, New Mexico

*{*13}* This is in reply to your letter dated December 13, 1950, in which you request an opinion as to whether or not a member of the association who becomes disabled, and who is under the superannuated retirement age, can retire on account of his disability by paying direct contributions to the fund in a lump sum, in an amount equivalent to 5 years of regular salary deductions.

Section 3-614 of the Public Employees' Retirement Act, as amended, reads as follows:

"Whenever any member of the Retirement Association, who has been a public employee and has paid regular monthly assessments to the Retirement Fund for a period of five (5) years, or more, and is under the superannuated retirement age, is found, after examination by one or more physicians selected by the Board, to have been permanently incapacitated, mentally or physically, by injuries sustained not intentionally self-inflicted while in the actual performance of duty, such member shall become entitled to the full retirement annuity for superannuation, the amount of the annuity to be determined by the number of years of service and rates as set forth in Section 13 of this Act."

*{*14}* The first part of Section 3-618 of the Public Employees' Act, as amended, reads as follows:

"No retirements on account of disability or superannuation shall be granted until August 1, 1949, nor shall any member of the Retirement Association be entitled to receive a retirement annuity for superannuation until he or she shall have paid into the Retirement Fund, either by deductions from salary or in a lump sum with interest, before such retirement, an amount equal to five years accumulated deductions from his or her average salary during the last five years of service."

I have endeavored to reconcile these two sections and construe them in order to arrive at the intent of the legislature. The first paragraph of Section 3-614 says:

"Whenever any member of the Retirement Association, who has been a public employee and has paid regular monthly assessments to the Retirement Fund for a period of five (5) years, or more, and is under the superannuated retirement age, is found, after examination by one or more physicians selected by the Board, to have been permanently incapacitated, mentally or physically, by injuries sustained not intentionally self-inflicted while in the actual performance of duty, such member shall become entitled to the full retirement annuity for superannuation, the amount of the annuity to be determined by the number of years of service and rates as set forth in Section 13 of this Act."

Under Section 3-614 a member of the association who becomes disabled, and who is under the superannuated retirement age, cannot retire on account of his disability by paying direct contributions or by paying the contributions in a lump sum, because Section 3-614 is not broad or specific enough.

However, Section 3-618 specifically says:

"Any employee who has paid into the Retirement Fund, either by deductions from salary or in a lump sum with interest, before such retirement, an amount equal to five years accumulated deductions from his or her average salary during the last five years of service."

The important part here is: "either by deductions from salary or in a lump sum with interest," so the employee who wishes to pay in a lump sum, even though he does not have five years of service, can do so under the construction of this language. This plainly indicates that it is optional with the member of the association to elect whether to pay in a lump sum or pay monthly.

Therefore, it is my opinion that a member of the association who becomes disabled, and who is under the superannuated retirement age, can retire on account of his disability by paying direct contributions to the fund for a period of five years, or to pay in a lump sum before the five years, if the amount is equivalent to five years of regular salary deductions.