

Opinion No. 54-5919

March 15, 1954

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. R. L. Ormsbee Executive Secretary New Mexico Public Employees' Retirement Association P. O. Box 925 Santa Fe, New Mexico

{*362} Receipt is acknowledged of your letter dated February 25, 1954, in which you request an opinion concerning the following question:

"Where an employee claims certain service credit to be used for retirement purposes and supports such claim with affidavits, would the Retirement Board be justified in accepting such affidavits when the records in the office of the State Treasurer and State Auditor do not show from the payroll records that any compensation was paid during the periods in question."

You further state that the period of service claimed has been checked in both the offices of the State Treasurer and State Auditor, and you have further informed me that the warrants and the payroll records are numbered in chronological order, and the name of the person that you have reference to does not appear in either the payroll vouchers or the warrants.

Under your Rule No. 3, sub-section (c), proof of public service, is found the following:

"(1) A Certificate from the executive head of the Department or Departments where applicant rendered public service; or

(2) When satisfactory information is submitted to the Retirement Board that no records exist of the Public Service rendered by applicant, then an affidavit signed by applicant and two responsible persons having personal knowledge corroborating such information; or

(3) Any other evidence acceptable to the Retirement Board."

Under your Rule No. 3, sub-section (c) (2), when the Retirement Board has information that no records exist of the public services rendered by applicant, then an affidavit signed by applicant and two responsible persons having personal knowledge corroborating such information is furnished the affidavits should be accepted. However, in the present case, the records are available and the records being available are the best evidence. It is therefore the opinion of this office that since the payroll voucher records are the best evidence, and the payroll vouchers from the department where said employee claims to have worked are available, and do not show that he was an employee, such records are the best evidence.

We feel that the payroll voucher should be the controlling document, and where it cannot be located for the period involved, then warrants and affidavits should be accepted as secondary evidence.

We trust that this fully answers your inquiry.

By: Hilario Rubio

Assist. Attorney General