

Opinion No. 54-6020

September 27, 1954

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. Epigmenio Ramirez Administrative Assistant Public Employees' Retirement Association of New Mexico Post Office Box 925 Santa Fe, New Mexico

{*482} Your letter dated September 15, 1954, requests an opinion from this office on two questions.

1. Whether or not participation of said supplemental benefits from the Albuquerque Retirement plan by the employees of the City of Albuquerque, who become members of the Public Employees' Retirement Association of New Mexico conflicts with Section 17 of Chapter 162 of the New Mexico Session Laws of 1953.
2. Whether or not said employees of the City of Albuquerque who are entitled to said supplemental benefits from the Albuquerque Retirement plan shall legally become members of the Public Employees' Retirement Association of New Mexico.

You state that effective September 1, 1954, the City of Albuquerque became legally affiliated with the Public Employees' Retirement Association of New Mexico by resolution passed, adopted and approved August 24, 1954.

The pertinent part of the Albuquerque Ordinance No. 964 reads as follows:

"6.1. The service rendered by a member prior to the affiliation date, to the extent credited him under the former plan, shall be credited him under the retireplan as Albuquerque service; Provided, that in no case shall such Albuquerque service include (1) any periods of service for which the said member is credited with state service, and (2) any periods of service rendered by him from and after the affiliation date.

"6.2. In any case of doubt as to the Albuquerque service to be credited any member, the board shall have final power to determine the Albuquerque service to be so credited.

"2.6. 'Contributing member' means any member who becomes a member of the state system.

"2.20. 'Voluntary retirement date' for a contributing member means the 'voluntary retirement date' provided for in the law governing the state system. For a city member 'voluntary retirement date' means the date he acquired 30 years of Albuquerque service before his attainment {*483} of the age of 60 years, or (2) he attained or attains the age of 60 years and has 10 or more years of Albuquerque service."

Section 1.7 of Chapter 162 of the New Mexico Session Laws of 1953, reads as follows:

"1.7. 'Employee' means any person, including any elected official, who is in the employ of any public employer and whose salary is paid by warrant or any other medium from any income of said public employer. The term 'employee' shall not include any person who is a beneficiary of any other retirement, pension or annuity plan created and established by the State of New Mexico or any of its political subdivisions."

The language of Section 6 of the Albuquerque Ordinance No. 964 and Section 1.7 of Chapter 162 of the 1953 New Mexico Session Laws are both mandatory and self explanatory.

After the repeal of the Albuquerque Retirement plan, naturally benefits to members not retired as of that date, are preserved and continue as contractual rights and do not prevent said employees from joining the State Retirement Association of the State of New Mexico.

In view of the language of the above quoted Albuquerque Retirement plan Ordinance No. 964, and Section 1.7 of Chapter 162 of the New Mexico Session Laws of 1953, it is the opinion of this office that membership in the Albuquerque Retirement plan does not constitute such a member a beneficiary under another retirement plan within the contemplation of the State plan, until such Albuquerque member actually becomes an annuitant under the city plan.

It is further the opinion of this office, in answer to your second question, that said employees of the City of Albuquerque who are members of the Albuquerque Retirement plan can legally become members of the Public Employees' Retirement Association of New Mexico.

Trusting that this fully answers your inquiries, I remain,

By: Hilario Rubio

Assist. Attorney General