

Opinion No. 54-6031

November 3, 1954

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. John C. Hays Acting Executive Secretary Public Employees' Retirement Association of New Mexico P. O. Box 925 Santa Fe, New Mexico

{*496} Receipt is acknowledged of your letter dated October 14, 1954, in which you request an opinion as to whether or not James A. Kerr, a former employee of the State Highway Department, is entitled to duty disability retirement under Section 14, Chapter 167, Laws of 1947, and under Section 11, Chapter 167, Laws of 1947.

The facts, as stated in your letter, are that Mr. Kerr, a former employee of the State Highway Department, was injured on August 5, 1952, while performing his regular duties as a Highway employee. It also appears from your statement of facts from the record that Mr. Kerr became a member of the Public Employees' Retirement Association of New Mexico on July 1, 1950, and made contributions by payroll deductions for {*497} the months of July to December, 1950, inclusive, and again for the months of March and May of the year 1952. Make up contributions were deducted by the Highway Department from the January, June and July 1952 payrolls. In all, there was a total of thirteen months contributions, of which eight months were by payroll deductions matched by the employer, and five months by unmatched payments by employee. It is also stated, from the record, that at the time of Mr. Kerr's injury current contributions were not being made, as provided for in Section 11, Chapter 167, New Mexico Session Laws of 1947.

From the statement of facts and from the record, Mr. Kerr did not comply with Section 14, Chapter 167 of the Laws of 1947, which provides that a public employee must pay regular monthly assessments for a period of five years, nor did Mr. Kerr comply with Section 11, Chapter 167, Laws of 1947, because he failed to make regular payments in lieu of salary deductions. Therefore, Mr. Kerr had no rights under the 1947 State Retirement Law, and he has no rights under the new 1953 State Retirement Law.

The 1953 State Retirement Law is the law applicable in this case for the reason that Mr. Kerr did not make his application for duty disability retirement until after the enactment of the 1953 Retirement Act. The record shows that Mr. Kerr was terminated from the Highway payroll on September 23, 1953, but the payroll records show that Mr. Kerr did not have any salary deductions made by the Highway Department, nor did the Highway Department match his contributions at any time during the year 1953, when he made his application. Therefore, Mr. Kerr has no rights under the 1953 State Retirement Law.

It is, therefore, the opinion of this office that since the record shows that Mr. Kerr did not comply with the old State Retirement Law of 1947, being Sections 11 and 14, Chapter 167, for the reason that he did not contribute for five years, or more, nor were his

contributions matched for five years, or more, by the Department, nor were regular deposits made in lieu of salary deductions, he had no rights under the old law, and neither does he have any rights under the new 1953 State Retirement Law as he is not a member and, therefore, is not entitled to a duty disability annuity.

Trusting that this answers your inquiry, we are

By: Hilario Rubio

Assist. Attorney General