

Opinion No. 54-6044

December 3, 1954

BY: RICHARD H. ROBINSON, Attorney General

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

{*515} In your letter dated November 29, 1954 you refer to Section 2.1 (6) of Chapter 162 of the Laws of 1953, being a portion of Section 10-602 of the 1941 Compilation, 1953 supplement, and inquire whether the increased annuity may be paid retroactively beginning with the effective date of the 1953 Act or whether the increased annuity should be paid prospectively from and after the date the additional 1 1/2% of the last five years' salary has been paid in by an annuitant retired prior to the effective date of the 1953 Act. The foregoing subsection reads as follows:

"2.1 (6) Each annuitant and beneficiary receiving an annuity under the aforesaid chapter 167, as amended, on the day preceding the effective date of this act, shall continue to receive the same annuity; provided, however, that if any such annuitant or his beneficiary shall pay to the association a lump sum payment equivalent to 1 1/2 per cent of the total salary received by him, during the last 5 years immediately preceding his retirement, the amount of his annuity shall be determined as hereinafter in this act provided."

It is our opinion that the language "the amount of his annuity **shall be determined** as hereinafter in this act provided," is prospective in operation and the increased annuity should begin and be paid from and after the date the additional 1 1/2% of the last five years' salary is paid by the annuitant or his beneficiary.

By: C. C. McCulloh

Assist. Attorney General