

Opinion No. 55-6075

January 12, 1955

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. Floyd Santistevan Director State Education Retirement, Santa Fe, New Mexico

We are in receipt of your letter dated January 6th together with copy of a letter dated December 28, 1954, from Mrs. Grace A. Ames to Mr. Thomas J. Hubbard, President of the Cobre Consolidated School Board, asking for the opinion of this office upon the following: Are the amounts of monies received by a female spouse under the Social Security Act because of contributions made thereto by her husband deductible from her State Education Retirement system benefits under Sections 73-12-16, et seq., N.M.S.A., 1953?

The provision in question of the teacher retirement law, is § 73-12-20, reading as follows:

"If any person retired under the provisions of this act (55-1114 -- 55-1118 [73-12-16 to 73-12-20]) shall also be entitled to benefits under any state or national retirement or old age benefit law, then the amount to be paid such person under this act (55-1114 -- 55-1118 [73-12-16 to 73-12-20]) shall be only the difference between the amount received under such other retirement or old age benefit law and the amount provided in this act (55-1114 -- 55-1118 [73-12-16 to 73-12-20])."

I am assuming for the purpose of this opinion that the female spouse is receiving benefits under the Federal Old Age and Survivors Benefits' portion of the Social Security Act, 42 USCA § 401, et seq. Payments made under this portion of the Social Security Act are ". . . benefits under any state or national retirement or old age benefit law . . .," Attorney General's Opinion No. 5273, dated January 3, 1950.

Therefore, the amounts of such payments must be deducted from those received under the State Education Retirement system.

Further, it matters not that the Old Age and Survivors Benefits under Social Security are received because of a husband's contribution to that system. Recipients of benefits from such system, whether contributions are made by recipient or someone else, are clearly within the provisions of § 73-12-20, N.M.S.A., 1953.

It is, therefore, the opinion of this office that amounts received by a female spouse under the Federal Old Age and Survivors Insurance portion of the Social Security Act, as a result of contributions made thereto by her husband, must be deducted from any benefits payable to such female spouse under the provisions of the State Education Retirement system.

Trusting that this answers your question, I am

By: Santiago E. Campos

Assistant Attorney General