

Opinion No. 55-6288

September 22, 1955

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. John C. Hays, Administrator, Social Security Division Public Employees' Retirement Ass'n of New Mexico, P. O. Box 2237, Santa Fe, New Mexico. Attention: Mr. Charles C. Staab Administrative Assistant

We have your letter of August 1st in which you requested an opinion from this office as to whether a county nurse can be legally excluded from a county coverage group under the Old-Age and Survivors System, due to the fact that part of the salary for such nurse is paid by the State and is covered under a retirement system.

It is the opinion of this office that where the county nurse position is covered under a retirement system that such position would have to be excluded under a county coverage group. We arrive at this conclusion on the basis of Section 213 (e), Handbook for State OASI Administrators, Part II, Coverage Under Agreements, Department of Health, Education, and Welfare, Social Security Administration, Bureau of Old-Age and Survivors Insurance. This particular section reads as follows:

"Prior to 1955 services performed by employees in positions which are covered by a retirement system on the date the agreement becomes applicable to the coverage group of which they are a part. Beginning January 1, 1955, these services, other than services in policeman's or fireman's positions, may be covered if the State takes action to include such services (ss 238-270 explain how the State may do this.) Services of employees in policeman's or fireman's positions which are covered by a retirement system on the date the agreement becomes applicable to their coverage group are excluded both before 1955 and after 1954 (See ss 273)."

Trusting we have answered your inquiry we remain

By: Paul L. Billhymer

Assistant Attorney General