

Opinion No. 55-6333

December 7, 1955

BY: RICHARD H. ROBINSON, Attorney General

TO: John C. Hays, Administrator, Social Security Division, Public Employees Retirement Association, P. O. Box 2237, Santa Fe, New Mexico. Attention: Mr. Charles C. Staab.

We have your letter of November 18, 1955, requesting an opinion on the following question:

Where there is a county and a town under the Public Employees Retirement System which wish to secure coverage by Social Security by conducting a referendum, can each of these political subdivisions be considered as a separate retirement system for the referendum?

The Federal Social Security Act allows the State the right to classify the retirement systems for the purpose of voting on the question of coverage. Section 242, Handbook for State O.A.S.I. Administrators, Part II, Department of Health, Education and Welfare,

Section 5-7-9, N.M.S.A., 1953 (1955 Pocket Parts), reads as follows:

"(a) The governor is empowered to authorize a referendum, and to designate any agency or individual to supervise its conduct, in accordance with the requirements of section 218 (d) (3) [U.S.C., tit. 42 § 418 (d) (3)] of the Social Security Act, on the question of whether service in positions covered by a retirement system established by the state or by a political subdivision thereof should be excluded from or included under an agreement under this act [5-7-1 to 5-7-9]. The notice of referendum required by section 218 (d) (3) (C) [U.S.C., tit. 42, § 418 (d) (3) (C)] of the Social Security Act to be given to employees shall contain or shall be accompanied by a statement, in such form and such detail as the agency or individual designated to supervise the referendum shall deem necessary and sufficient, to inform the employees of the rights which will accrue to them and their dependents and survivors, and the liabilities to which they will be subject, if their services are included under an agreement under this act."

It is the opinion of this office that the Governor can, within the provisions of the Social Security Act, designate what shall constitute a retirement system for the purpose of a referendum. The Governor can designate each political subdivision as a separate retirement system for the purpose of this referendum. We arrive at the conclusion from considering the whole of Chapter 172, Laws of 1955. Section 1 of said Act declares as a policy the purpose of the law is to secure as broad coverage as is possible under the Social Security Act. Section 5 of the Act provides that each political subdivision wishing Social Security coverage must submit a plan which, among other things, must provide source of the funds and reasonable assurance that the source is adequate.

It would appear from this that the Legislature intended so far as the political subdivisions are concerned that the initial step for coverage was to be made by the political subdivision by submitting a plan. If the plan was proper, and the political subdivision had its own retirement system or was a part of the State system, the Governor was to call for a referendum for such political subdivision. If there happened to be a number of such divisions with proper plans, they can, of course, be grouped together for the purpose of the referendum. It would seem that no political subdivision would work out a plan for coverage without first determining that the employees were for such plan.

If this were not the intent of the Legislature, it would appear that only a referendum for the State system could be called, which would include all affiliated political subdivisions. If the referendum passed, we could have a situation where coverage was available but the political subdivision had not as yet complied with Section 5 of the Act.

In fact, the political subdivisions could refuse to submit a plan and defeat the referendum. This certainly would not be within the spirit of the Act as announced by the Legislature in its declaration of policy.

For the reasons herein set out, we are of the opinion that each of the political subdivisions mentioned in your letter could be considered a separate retirement system for the purpose of conducting a referendum.

Trusting we have answered your question, we remain

By Paul L. Billhymer

Assistant Attorney General