

**Opinion No. 56-6370**

January 27, 1956

**BY:** RICHARD H. ROBINSON, Attorney General

**TO:** Mr. John C. Hays, Executive Secretary, Public Employees' Retirement Association of New Mexico, P. O. Box 2237, Santa Fe, New Mexico

We have your letter of January 11 in which you request an opinion from this office as to whether § 9.1, Chapter 162, Laws of 1953, makes the head of the departments of each affiliated public employer responsible for the deductions from employees' pay of the amount of contributions required from each employee under Public Employees Retirement.

The important provisions of § 9.1, Chapter 162, Laws of 1953, reads as follows:

". . . Such payments shall be made by deductions thereof from the salaries of members. **Each department head of each affiliated public employer is hereby directed to cause such deductions to be made on each abstract from the salary of each member**, and to approve payment to the State Treasurer for the aggregate amount so deducted from the salaries covered by the abstract." (Emphasis ours)

We note that by this statute each department head "is hereby directed" to cause such deductions to be made. We are of the opinion that this particular provision is mandatory inasmuch as this is the essence of the thing to be done by each department head in order to insure that the employee will receive proper credit under the Retirement Act. See 82 C.J.S. (Statutes), § 376 at page 873.

Generally, where a statute provides that a public officer must discharge certain duties which affect individual rights, he is required to perform such duties with diligence. See 67 C.J.S. (Officers), § 114 at page 402.

We are of the opinion that by the very wording of the statute a mandatory duty is placed upon each department head to see that proper deductions are made from eligible employees' salaries so that proper credit can be received by such employees under the terms and provisions of the Public Employees' Retirement System of New Mexico.

Trusting we have answered your question, we remain

By Paul L. Billhymer

Assistant Attorney General