

Opinion No. 56-6405

March 9, 1956

BY: RICHARD H. ROBINSON, Attorney General

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

This is in reply to your letter of February 29th in which you quest an opinion from this office as to whether or not the Board of Trustees of the New Mexico Industrial School, in order to guarantee full retirement rights and protection, will have to pay 3% assessment on the annual salaries of eligible employees back to the inception date of this particular provision, which was set up by Chapter 50, Laws of 1945, or whether the 3% assessment on the annual salaries of eligible employees will have to be paid on May 28, 1955, which is the date your office notified this office that the resolution was dated.

Section 73-12-21, N.M.S.A., 1953 Compilation, Pocket Supplement, extended or amended the original Act which was passed in 1945 by including the following proviso:

". . . Provided that no transfer shall be made hereunder from the funds of any institutions until the board of regents of the respective educational institutions shall notify the state retirement board of its desires to participate in this retirement plan. Any state institution, the Museum of New Mexico, the Girls' Welfare Home at Albuquerque, New Mexico, or the New Mexico Industrial School may refuse to participate in said plan, and failure to give notice by June 30, 1955, shall be deemed an election not to participate therein. . . ." (Emphasis Supplied.)

The above section provides that the date of notification by the Board of Trustees of the New Mexico Industrial School of its desire to participate in the Teachers Retirement plan is the date of election not only to participate but to start payment of 3% assessment on annual salaries of eligible employees.

It is, therefore, the opinion of this office that the New Mexico Industrial School, in order to guarantee rights and protection, has to pay 3% assessment on the annual salaries of eligible employees beginning May 28, 1955, the date when the Board of Trustees of the New Mexico Industrial School notified the State Education Retirement Board that they were ready to conform with this statute.

I trust the above answers your inquiry.

By: Hilario Rubio

Assistant Attorney General