

**Opinion No. 56-6416**

April 6, 1956

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

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

We have your letter of March 23rd in which you request an opinion from this office as to whether the employees of the State Education Retirement Board will be eligible to join the Social Security Plan by voting favorably upon a referendum. Section 73-12-16, N.M.S.A., 1953, provides, in part:

". . . The state director of the state education retirement system, any full time employee of the state education retirement board, shall also be entitled to the benefits of this act. (73-12-16 to 73-12-23), and their service shall be credited as service hereunder. . . ."

Under the Social Security laws, both State and Federal, all members of the Retirement system become eligible for Social Security upon a favorable vote of the referendum posing the questions of joining the Social Security system. Since the employees of the State Education Retirement Board are covered by the retirement provisions provided by law for the educational system of the State, these employees will be entitled to Social Security coverage upon a favorable vote when a referendum is held as provided by Chapter 172, Laws of 1955 for such system.

It is our understanding that some of the employees of the State Education Retirement Board are also members of the Public Employees Retirement System. If this is true, it is our understanding that before such employees can become eligible for Social Security benefits it will be necessary that a favorable vote be had not only in the referendum held under the retirement system for the educational system, but also there must be a favorable vote under a referendum held for the Public Employees Retirement System. In other words, both systems must vote favorably on the referendum before parties covered by two systems can become eligible for Social Security benefits.

We trust the above answers your inquiries, we remain

By: Paul L. Billhymer

Assistant Attorney General