

Opinion No. 56-6471

June 15, 1956

BY: RICHARD H. ROBINSON, Attorney General

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

We have your letter of June 7th in which you request an opinion from this office as to whether the Teachers' Retirement System can be subdivided so as to allow the various political subdivisions such as county and municipal school boards to hold a separate referendum.

We are of the opinion that the reasoning set forth in Opinion No. 6333, dated December 7th, 1955, which dealt with this problem so far as Public Employees Retirement System is concerned, also applies to the Teachers' Retirement System. We are not unmindful of Section 5-7-3 (c), N.M.S.A., 1953 Compilation, which reads as follows:

"(c) Pursuant to section 218 (d) (6) (U.S.C. tit. 42 § 418 (d) (6) of the Social Security Act, the retirement system covering the employees who are eligible to acquire or who have acquired retirement and emeritus status under section 1 of chapter 112, Laws of 1937, as amended, (section 73-12-16 New Mexico Statutes Annotated, 1953 Compilation) shall be deemed to constitute a separate system for the employees of each institution of higher learning covered thereunder."

We do not think, however, that this particular provision overcomes the fact that under Section 5-7-5, N.M.S.A., 1953 Compilation, each political subdivision of the State is authorized and required to submit for approval a plan to extend the benefit of Title II of Social Security in conformity with the applicable provisions of such Act to employees of such political subdivision.

As pointed out in the former opinion, No. 6333, the Legislature intended that the moving party was to be the political subdivision whose employees were to be covered. If there can not be any breakdown of a retirement system according to political subdivisions, there would be no reason to submit a plan, inasmuch as an overall referendum would force the political subdivisions included within that referendum to join Social Security if such referendum passed. Since the Legislature authorized the various subdivisions to submit the plans for approval, we are of the opinion that the political subdivisions which make up the employing agents of those employees under Teacher Retirement can be subdivided as the Governor may determine for the purposes of calling a referendum.

Trusting we have answered your question, we remain

By: Paul L. Billhymer

Assistant Attorney General