

Opinion No. 56-6508

August 10, 1956

BY: RICHARD H. ROBINSON, Attorney General

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

We have your letter of July 31st in which you request an opinion from this office upon the following question:

"Are Soil Conservation Districts required to comply with the Public Employees' Retirement Act?"

We gather that Soil Conservation Districts and Irrigation Districts have not been requested to comply with the provisions of the New Mexico Public Employees Retirement Act. In order to definitely determine whether the Soil Conservation Districts should comply with the Act it is necessary to review the various laws creating this Retirement system. Chapter 167, Laws of 1947, Section 1 (1), reads as follows:

"Public employer shall mean the State of New Mexico or any of its boards, departments, bureaus, or agencies, any municipality, city or county in the State of New Mexico."

Chapter 174, Laws of 1949, Section 1 (1), amended this particular section to read as follows:

"'Public Employer' shall mean the State of New Mexico, or any of its boards, departments, bureaus or agencies, any conservancy district, including the Middle Rio Grande Conservancy District, any municipality, city or county in the State of New Mexico."

Chapter 162, Laws of 1953, the pertinent part of which reads as follows:

"1.3 'State' means the State of New Mexico, and includes its boards, departments, bureaus and agencies."

"1.4 'Municipality' means any municipality, city, county and conservancy district in the State of New Mexico, including the boards, departments, bureaus and agencies of the said municipality, city, county or conservancy district."

It is to be noted that in none of these definitions is there a mention of Soil Conservation Districts. We would further point out that in Chapter 174, Laws of 1949, that the Legislature saw fit to add "conservancy districts" to the list of public employers therein named. By this action it is apparent that the Legislature considered that such type of

organization was not theretofore included. However, the Legislature did not see fit to add or extend the definition to include Soil Conservation Districts.

Under the well known statutory construction rule of *expressio unius est exclusio alterius*, we are of the opinion that since the Legislature saw fit to name the types of State organizations which were to be included as public employers, that its failure to specifically name Soil Conservation Districts was a clear intent that such organizations were not to be considered as within the provisions of the Public Employees Retirement system. See 82 C.J.S., Statutes, Section 333 at page 666. Strength is also added to this conclusion by the fact that the Legislature saw fit to re-enact substantially the same provisions in Chapter 162, Laws of 1953, with the knowledge that the administrative construction of the Act was that Soil Conservation Districts did not come within this provision. See 82 C.J.S., Statutes, Section 359, at page 769.

In other words, the Legislature accepted the administrative construction placed upon this Act, namely, that Soil Conservation Districts were not within its provisions, and by its failure to take action to bring them within the provisions of the Act, we conclude that the Legislature did not intend to cover this particular type of organization.

For all the above reasons, we are therefore of the opinion that Soil Conservation Districts are not required to comply with the provisions of the Public Employees Retirement Act.

Trusting we have answered your question, we remain

By: Paul L. Billhymer

Assistant Attorney General