

Opinion No. 56-6521

September 26, 1956

BY: RICHARD H. ROBINSON, Attorney General

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

We have your letter of August 2nd, in which you request an opinion from this office as to whether the cooks in the hot lunch program of the Mosquero Municipal School System are eligible for Social Security Coverage.

From your information we understand that as of this time the cooks under this program have been making contributions to FI CA. If these cooks under the hot lunch program are full time employees of the Mosquero School System, then it seems clear that they would come under the provisions of Section 73-12-16, N.M.S.A., 1953 Compilation, which is the Retirement system for teachers and other employees of the public school system.

It is our understanding that generally employees of a State covered by a retirement system cannot participate in the Social Security System of the Federal Government unless and until steps are taken under the Federal-State Agreement to bring such employees within the Social Security System.

The State of New Mexico has entered into such Federal-State Agreements, but as yet the State has not taken the necessary steps to bring the employees of the various school systems within Social Security coverage.

In view of the fact that contributions have been made for these people in the Mosquero School System, it would be our suggestion that before such contributions were stopped that a definite ruling should be secured from the Social Security Administrator for New Mexico on this particular problem. However, from the information that we have concerning the Social Security Act it would be our opinion that such employees would not be eligible to participate in the Social Security System at this particular time, and will not be eligible to secure Social Security Benefits until the necessary steps as provided by law are taken to bring such public employees within the Social Security System.

Trusting we have answered your question, we remain

By: Paul L. Billhymer

Assistant Attorney General