

**Opinion No. 56-6529**

October 10, 1956

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

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

We have your letter of August 7, 1956, in which you request an opinion from this office concerning the following question:

Are the appraisers and their assistants employees of the particular Conservancy District which they serve so that the district is required to include them within the Public Employees Retirement Act?

It is our understanding that this particular question has arisen with reference to the Sandia Conservancy District. It is true that the Board of Appraisers and their assistants are appointed and are responsible directly to the court. See Section 75, Article 29 of the New Mexico Constitution. Section 75-30-28, N.M.S.A., 1953 Compilation, provides that the Conservancy District shall pay the expenses and allowances of the Board of Appraisers. We assume that the compensation paid to the Board of Appraisers comes from the money which is set aside by Conservancy law for the operation of the Conservancy District. It is true that the Board of Directors of the Conservancy District does not exercise any control over the operation of the Board of Appraisers and their assistants. The control of the Board of Appraisers is actually exercised by the Court. It is clear, however, that the Board of Appraisers and their assistants are a part of the whole Conservancy District System, and are in effect actually employees of the Conservancy District, inasmuch, as they perform a vital part of the Conservancy System.

We would further point out, however, that it seems that the Board of Appraisers and perhaps their assistants are paid on a per diem basis and are not employees on a salary basis. It might well be that a careful investigation would reveal that such employees would come within the exemption of sub-paragraph 2, Section 5-5-6, N.M.S.A., 1953 Compilation, which in effect exempts part-time employees from the provisions of the Retirement Act. The Retirement Board should determine whether the questioned employees are part-time employees and if they are, these employees should be exempted.

Trusting we have answered your question, we remain

By: Paul L. Billhymer

Assistant Attorney General