Opinion No. 57-221

September 9, 1957

BY: OPINION OF FRED M. STANDLEY, Attorney General Robert F. Pyatt, Assistant Attorney General

TO: Honorable R. C. Morgan, State Senator, Roosevelt County, Portales, New Mexico

QUESTION

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1. Can the State constitutionally pay its share to retired members of the Supreme Court for their retirement benefits?

2 Can the State constitutionally pay its share to the retired District Judges for their retirement benefits?

CONCLUSIONS

1. Yes.

2. Yes.

OPINION

ANALYSIS

We believe that your two questions as to both retired Supreme Court Justices and retired District Judges are answered by two cases from our Supreme Court.

In State ex rel. Sena v. Trujillo, State Auditor, 46 N.M. 361, 129 P. 2d 329, it was held that retirement benefits could not constitutionally be paid to a retired public servant who was not in the public service at the time of the enactment of the applicable retirement benefits law. To be contrasted with this case is the latter case of State ex rel. Hudgins, et al. v. Public Employees Retirement Board, et al., 58 N.M. 543, 273 P. 2d 743, in which it was held that retirement benefits could constitutionally be paid where the employees were in the public service at the time of enactment of the retirement law. The earlier case was distinguished as involving a different factual situation above noted by us.

Thus, the question seems to turn on whether the public employee involved was in the public service at the time of the enactment of the initial retirement benefits law applicable to him. Consequently, we have no hesitation in holding that if retired District Judges and retired Supreme Court Justices were in State service at the time of the

initial enactment of the Judges Retirement Law, that such law would not be repugnant to the Constitution of New Mexico, including Article IX, § 14, considered in both the above cases and which we assume is the constitutional provision which you have in mind.