

Opinion No. 57-229

September 11, 1957

BY: OPINION OF FRED M. STANDLEY, Attorney General Hilario Rubio, Assistant Attorney General

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

QUESTION

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Since Museum of New Mexico employees were not allowed to become members of the Public Employees Retirement Association prior to July 1, 1957, can these Museum of New Mexico employees pay up back contributions, have them matched by the Museum Board and then claim credit for past service?

CONCLUSION

No. See analysis.

OPINION

ANALYSIS

First, the definitions set out in § 5-5-1, N.M.S.A., 1953 Compilation, defines an "affiliated public employer" as meaning any "employer" whose employees are included in the membership of the Association, as provided in this Act. "Employee" is defined as follows:

"'Employee' means any person, including any elected official, who is in the employ of any public employer and whose salary is paid by warrant or any other medium from any income of said public employer. The term 'employee' shall not include any person who is a beneficiary of any other retirement, pension or annuity plan created and established by the state of New Mexico or any of its political subdivisions."

The people of the Museum, under Opinion No. 57-164, hired after July 1, 1957, as well as the employees who exempted themselves under the Teachers Retirement Act, became members of the Public Employees Retirement Association by virtue of their employment, but prior to July 1, 1957 the Museum employees were not employees of an affiliated employer and cannot, under the above definitions, be considered employees of an affiliated employer.

A further reason for a negative answer to the question is § 11 of Chapter 235, Laws of 1957, which is the General Appropriations Law for all the departments and which reads as follows:

"General fund appropriations made for a specific fiscal year may not be used for paying obligations of any other fiscal year, except upon approval of the department of finance and administration and the state board of finance, and any unused balance of general fund appropriations remaining to the credit of any state office or department at the close of a fiscal year shall revert to the state general fund and be used to meet appropriations for the succeeding fiscal year."

It is true that you do not specifically state how the Musuem is going to match this money for contributing service but if they are going to match it with money from this year for other years, or if they are going to match it altogether from one fiscal year, we believe that they are violating the above quoted section of the General Appropriations Act of 1957.

Therefore, our conclusion is no, the employer cannot match these contributions for contributing service of the Museum employees in view of the above quoted statutes.