

## **Opinion No. 57-90**

May 7, 1957

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

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

### **QUESTIONS**

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Does a person who was a contributing member of the Retirement Association at the time of taking office as an elected official have the right to exempt himself as an elected official?

#### CONCLUSION

Yes, as an elected official.

### **OPINION**

#### ANALYSIS

According to your letter of April 23, 1957, this person whom you have in mind was a deputy county clerk, and a contributing member of the Retirement Association, who took over as an elected county clerk on January 1, 1955. On the same day this person was also appointed district court clerk, and has continued to pay contributions into the fund on a district clerk's salary, but has not contributed on his salary as county clerk.

This person, when he became an elected official, failed to qualify as an elected official member, as provided in the pertinent part of § 5-5-6, N.M.S.A., 1953 Comp., which reads as follows:

". . . Any elected official of an affiliated public employer shall become a member of the association upon his written application filed with the retirement board."

This person did not make written application and file same with the Retirement Board as an elected official. Therefore he has continued his membership as clerk of the district court only.