

## Opinion No. 58-130

June 19, 1958

**BY:** OPINION OF FRED M. STANDLEY, Attorney General Paul L. Billhymer, Assistant Attorney General

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

### QUESTION

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Are non-certified employees of local school systems who were employed subsequent to July 1, 1957 mandatorily covered under the Public Employees' Retirement Act?

#### CONCLUSION

No.

### OPINION

#### ANALYSIS

It is our understanding that your inquiry is the result of a request for coverage of noncertified local school system personnel under the Public Employees' Retirement Act. This results from the fact that Chapter 197 Laws 1957 excludes non-certified employees of local school systems hired after July 1, 1957.

We believe this question is controlled by § 5-5-1 (3) (4) N.M.S.A., 1953 Compilation, reading as follows:

"The following words and phrases as used in this act (5-5-1 to 5-5-23), unless a different meaning is clearly indicated by the context, shall have the following meanings: . . . .

3. "State" means the state of New Mexico, and includes its boards, departments, bureaus and agencies.

4. "Municipality" means any municipality, city, county and conservancy district in the State of New Mexico, including the boards, departments, bureaus and agencies of the said municipality, city, county or conservancy district . . . ."

It is to be noted that School boards are not included in the definition as such.

Such organizations can only be included as a "Public Employer" if such organization is one of "boards, departments, bureaus and agencies" of the state. In one sense local school organizations are part of the state government which have the duty to carry out a state function, namely, public education. However, this statute is actually including the state "boards, departments, bureaus and agencies" which operate directly on the state level. Proof of this can be found from the fact that a special section defines local governmental units included as "public employers" namely paragraph (4) above quoted. If all local governmental agencies were to be included as a part of the state government there would be no need for this paragraph (4). Generally Local School organizations are considered as quasi municipal corporations (78 C.J.S. Schools & School District, § 25, page 659. We, therefore, conclude that local school systems are not included in the definition of "State".

We next turn to determine whether local school system organizations are included within the definitions of paragraph (4) above quoted. As pointed out these organizations are not specifically mentioned. Can they be included as "boards, departments, bureaus and agencies of said municipality, city, county or conservancy district"? We believe that it can hardly be a subject of argument that local school system organizations are independent of all county or city control. There is no direct connection or authority exercised by city or counties over any of the local school system organizations. These school organizations are completely independent of the local governmental organizations such as counties or city. They, therefore, could not be considered as "boards, departments, bureaus and agencies of the said municipality, city and county."

We, therefore, conclude that local school organizations are not "public employers" within the definitions of such "public employers" under the "Public Employees Retirement Act". It follows from this that non-certificated personnel of local school systems employed after July 1, 1957, eligible for coverage are not under the "Public Employees' Retirement Act."