

Opinion No. 59-119

August 26, 1959

BY: HILTON A. DICKSON, JR., Attorney General

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

{*185} Receipt is acknowledged of your recent request for an opinion on the following question:

Can a retired member of the Public Employees Association who was granted an annuity effective March 20, 1957, of \$ 66.13 per month reduce his annuity by \$ 1.00 per month by contributing or giving said \$ 1.00 per month as a gift to the Public Employees Retirement Association?

It is our opinion that an individual annuitant cannot, by any action on his part, effect a reduction in the amount of his annuity.

His annuity is fixed by the Retirement Board and it is immaterial whether or not he offers to give or does in fact give a portion of his annuity to the association as a gift. Such a gift would not alter his annuity payment as such. The only authority which we find for the increase or decrease in the amount of retirement annuities payable is under Section 5-5-2, N.M.S.A., 1953 Compilation, subsection 5. This section provides the authority to increase or decrease the amount of retirement annuities by a majority vote of an annual or special meeting of the Association. We interpret this section to mean that the decrease or increase would be based on a class adjustment and not on a particular individual's annuity.

If the annuitant desires to make a gift of a portion of his retirement annuity, the Public Employees Retirement Association of New Mexico has authority to accept such a gift. Section 5-5-23, N.M.S.A., 1953 Compilation, reads as follows:

"The retirement board is hereby authorized and empowered to receive donations, gifts and bequests and credit same to income fund."

This section of the statute quoted above needs no further interpretation.

By Hilario Rubio

Assistant Attorney General