

Opinion No. 59-191

November 20, 1959

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

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

QUESTION

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Can Mr. Wilson remain a member of the Retirement Board due to his separation from service with the State of New Mexico?

CONCLUSION

Yes.

OPINION

{*294} **ANALYSIS**

Mr. Wilson, according to your letter, was elected in 1956 for a four year term as a member of the Retirement Board. His term does not expire until September of 1960. Mr. Wilson terminated his services with the Highway Department in July of 1959. He has 28 years of creditable service and is leaving his money on deposit for the purpose of receiving a deferred annuity.

It is to be noted that Mr. Wilson has retained his New Mexico residence and his absence from the state is of a temporary nature. Therefore, as a resident member of the Board he would be subject to removal as hereinafter set out.

The pertinent sections of the Retirement Act for a determination of your question are the following:

"5-5-2 . . .

VACANCY ON BOARD

{*295} 4. In the event any member of the retirement board, elected by the membership to the board, fails to attend 4 consecutive scheduled meetings of the board, unless in each case excused for cause by the board members attending such meetings, he shall be considered to have resigned from the board and the board shall by resolution

declare his office as board member vacated as of the date of adoption of such resolution. . . ."

"5-5-6. . . .

4. Except as otherwise provided in section 5-5-1 through 5-5-23 New Mexico Statutes Annotated, 1953 Compilation (being Laws 1953, chapter 162), as amended from time to time, should any member separate from the services of an affiliated public employer, for reasons other than becoming an annuitant, he shall thereupon cease to be a member, and the total service credited to him, at the date of his said separation from service, shall be forfeited by him. In the event the said person is reemployed by an affiliated public employer he shall again become a contributing member of the association, and the total service forfeited by him, at the time of his said last separation from service, shall be restored to his credit: Provided, that the said member returns to the employees' savings fund the full amount of accumulated deductions he may have previously withdrawn therefrom, together with regular interest computed from the date of withdrawal to the date or dates of repayment. In the event a member becomes an annuitant, by reason of his retirement, he shall thereupon cease to be a member so long as he shall be an annuitant; . . ."

"5-5-14. DEFERRED RETIREMENT ANNUITY. -- 1. Should any member who has 10 or more years of total service credit leave the service of any affiliated public employer prior to his voluntary retirement date, for reasons other than his death or becoming an annuitant, **he shall remain a member during the period of his absence** from service for the exclusive purpose only of receiving a superannuation retirement annuity provided for in section 13.1. [5-5-13, subsection 1]. . . ." (Emphasis ours)

Under paragraph 4 of § 5-5-2, hereinbefore quoted, the only manner in which Mr. Wilson would cease to be a member would be for him to send a valid excuse for his absence and the Retirement Board fail to excuse him for cause, or for him not to send a valid excuse altogether.

There is nothing in the Retirement Act for the termination of membership on the Retirement Board upon termination of employment.

Under § 5-5-6, paragraph 4, Mr. Wilson has not withdrawn his accumulated deductions and since he has more than 10 years of service he remains a member of the association.

But § 5-5-14, N.M.S.A., 1953 Compilation, specifically states that if a member has 10 or more years of total service and leaves the service for reasons other than death or becoming an annuitant, he shall remain a member during the period of his absence from service for the exclusive purpose only of receiving a superannuation retirement annuity. This language is mandatory.

Therefore, our only conclusion and opinion from the mandatory language of the last above quoted section is, that Mr. Wilson is a member of the Retirement Association and can continue as a member of the Retirement Board.

By: Hilario Rubio

Assistant Attorney General