

Opinion No. 60-117

June 17, 1960

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

TO: Mr. Kenneth A. Davis, Director Educational Retirement Board Santa Fe, New Mexico

QUESTION

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Is a retired teacher entitled to have his benefit computed under the provisions of Sec. 73-12-62 D, N.M.S.A., 1953 Comp. (P.S.), under the following circumstances:

- (a) The retired teacher purchased years of contributory employment on April 16, 1959.
- (b) The application for retirement was filed on May 11, 1959, prior to the date on which Sec. 73-12-62 became effective.
- (c) The educational retirement board approved the application on June 12, 1959, and set the effective date for retirement as of July 1, 1959.

CONCLUSION

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{*492} ANALYSIS

Section 73-12-62 D, N.M.S.A., 1953 Comp. (P.S.), being a compilation of Chapter 341, Section 4, Laws of 1959 reads as follows:

"D. From and after the effective date of this 1959 act, the retirement benefits of members **who have heretofore been retired under the Educational Retirement Act** and who have acquired contributory employment by purchase shall be computed upon the basis of the amount paid therefore." (Emphasis supplied.)

The contributory employment by purchase is a reference to Section 73-12-62 B which states that a member desiring to retire before he has completed five years of contributory employment shall be limited to the maximum benefit he would have been entitled to receive under any statute repealed by the educational retirement act provided that he may acquire five or less years of such employment by contributing to the retirement fund for each contributory year, a sum equal to the prevailing combined

contributions of members and local administrative units in effect at the time such employment is acquired, applied to the members average annual salary for the last five years of employment plus interest not to exceed 3% per annum.

It is clear that the provisions of the 1959 amendment can only be applied to those members of the educational system who were retired when Chapter 341, Section 4, Laws of 1959 became effective. This chapter and section became effective on June 12, 1959. ninety days after the adjournment of the 1959 Legislature since there was no emergency clause affixed to the Legislation. See Article IV, Section 23 of the Constitution. Thus, in order for an individual to take advantage of this section, he would have to have been retired prior to June 12, 1959.

The individual in question was not retired until July 1, 1959, and therefore, cannot avail himself of the provisions of Section 73-12-62 D. Section 73-12-69 is clear in stating that retirement shall be effective on July 1 next following the approval by the educational retirement board or on the first day of any other month with the approval of the local administrative unit and the educational retirement board. In this case, the educational retirement board set the effective date for retirement as July 1, 1959 and therefore, this particular retirement cannot be effective until that date no matter when the application for retirement was submitted.

By: Philip R. Ashby

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