

Opinion No. 60-164

September 21, 1960

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

TO: John E. Hobbes Assistant District Attorney Cimarron, New Mexico

QUESTION

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1. Can a person at the age of 60 or later, retire from both employments and draw both retirement benefits, that is, the Public Employees Retirement Act and Teachers' Retirement Act?
2. Must this person choose one retirement act and exclude the other?

CONCLUSIONS

1. No.
2. Yes.

OPINION

{*553} ANALYSIS

A person cannot draw retirement benefits from both the Public Employees Retirement Act of New Mexico and the Teachers' Retirement Act. Sec. 73-12-51, N.M.S.A., 1953 Comp. (P.S.), provides as follows:

"Regular Membership. -- Except as herein provided, regular membership as described in section 2 (73-12-35), subdivision B, of the Educational Retirement Act, shall be a condition of employment and shall exclude membership and participation in any other retirement program of the state of New Mexico."

The prohibition in the above quoted act specifically excludes membership and participation in any other retirement program of the State of New Mexico if you are a member of the Teachers' Retirement Act of New Mexico.

The Public Employees Retirement Act, under sub-section G of Sec. 5-5-1 (P.S.) under heading of **Definitions** provides as follows:

"G. 'Employee' means any person, including any elected official, who is in the employ of any public employer and whose salary is paid by warrant or any other medium from any

income of said public employer. The term shall include full time civilian employees employed through direct appointment or designation by the governor as commander-in-chief of the national guard or by the adjutant general, and whose salaries are paid by the United States from funds allocated to the national guard of this state. 'Employee' does not include any person who is a beneficiary of any other retirement, pension or annuity plan created and established by the state or any of its political subdivisions."

This section specifically provides that an "employee" does not include any person who is a beneficiary of any other retirement pension or annuity plan created and established by the state or any of its political subdivisions.

Since the Teachers' Retirement Act specifically prohibits its employees from belonging to any other retirement plan in the state and the Public Employees Retirement Act does not include in its membership any other employee who is a beneficiary of any other retirement plan, it is our opinion that a person cannot draw retirement from both the Teachers' Retirement Act and the Public Employees Retirement Act.

A person must choose to come under either the Teachers' Retirement Act or the Public Employees Retirement Act and exclude one of them.

We believe that the above quoted sections of the Teachers' Retirement Act and the Public Employees Retirement Act of New Mexico, one specifically prohibits obtaining retirement benefits under any state plan and the Public Employees Retirement Act does not include any of its members or employees under any other retirement plan of the State of New Mexico.

By: Hilario Rubio

Assistant Attorney General