

Opinion No. 60-91

May 18, 1960

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

TO: Mr. Bruce T. Ellis Acting Director Museum of New Mexico Santa Fe, New Mexico

QUESTION

FACTS

Miss Thelma Robinson, an employee of the Museum of New Mexico, was employed by the Museum on July 23, 1954 and has been continually so employed since that time. Prior to this time, she was employed in an administrative position by Williams College, Williamstown, Massachusetts, for 19 years from 1924 to 1943. From 1943 until February, 1954, she was in the Armed Services of the United States in the Women's Army Corps.

QUESTION

Is Miss Robinson entitled to Allowed Service-Credit without contribution for the purposes of retirement under Sec. 73-12-73, N.M.S.A., 1953 Comp. (PS)?

CONCLUSION

No.

OPINION

{*455} ANALYSIS

Sec. 73-12-73, N.M.S.A., 1953 Comp. (PS), provides as pertinent here that a person covered under the Educational Retirement Act employed as a public school teacher or administrator or teacher or administrator in any public institution of higher learning in another state, territory or possession of the United States if he contributes to the Educational Retirement Fund may be certified to have acquired Allowed Service-Credit provided that half credit may be allowed without contribution by such person for not more than 10 years of such educational service if such service was prior to June 15, 1953 and the person was employed in New Mexico prior to June 13, 1953 in any position or positions covered by the Educational Retirement Act or any acts repealed thereby.

The date June 13, 1953 is obviously a reference to the effective date of Chap. 57, § 1, Laws of 1953, compiled as Sec. 73-12-16 (a) of the 1953 Compilation, now repealed, which provided as pertinent here that any person over the age of 60 years employed in

the public schools or institutions, boards or offices covered by the Act for at least 15 years could be retired provided that half credit could be given for not more than 10 years of educational service in other states, territories and possessions of the United States prior to serving in New Mexico to any contract teacher and education system employee covered by the Act, **if regularly employed in New Mexico prior to the passage of this Act.**

It is clear from reading Sec. 73-12-73 and its obvious reference to the now repealed Section 73-12-16, that Miss Robinson cannot claim Allowed Service-Credit for out-of-state educational employment since she did not enter the employment of the Museum of New Mexico prior to June 13, 1953. By Opinion No. 57-69, dated April 10, 1957, we held that employees of the Museum of New Mexico were provisional members subject to the retirement benefits of the Educational Retirement Act passed by the 1957 Legislature. However, as a provisional member, Miss Robinson would still have to meet the requirements of Sec. 73-12-73. She cannot meet such requirements, hence, cannot be given Allowed Service-Credit without contribution.

Although your question has been answered, we wish to point out that Miss Robinson may by contribution acquire Allowed Service-Credit for the period she was employed outside the State of New Mexico not to exceed half credit for 10 years' educational service. However, she cannot include such Allowed Service-Credit as part of the 15 years of earned service-credit required under Sec. 73-12-66 as a minimum for retirement. This is because of the certain definitions contained in Sec. 73-12-35 (PS). Sec. 73-12-35 (K) defining "Earned Service-Credit" states that such credit is that period of time during which a member was engaged in **employment or prior employment** with which he is accredited for the purpose of determining his eligibility for retirement or disability benefits. "Employment" is defined by Sec. 73-12-35 (F) as employment under a **local administrative unit** which qualifies a person to be a member. "Prior employment" is defined by Sec. 73-12-35 (I) as employment performed prior to the effective date of the Educational Retirement Act {**456*} which would be **service employment or provisional service employment** if performed thereafter. Sec. 73-12-35(D) defines "local administrative unit" as the employing agency, however constituted, which is directly responsible for the payment of compensation for the employment of members. "Service employment" and "provisional service employment" are defined by Secs. 73-12-35 (G) and (H) as employment which qualifies a person to be a regular member or a provisional member respectively.

It is clear from reading the above-cited statutory sections that Earned Service-Credit must be computed under the present law on the basis of the period of time served in New Mexico and that the Allowed Service-Credit under Sec. 73-12-73, being credit for out-of-state employment, cannot be used in computing the minimum retirement period of 15 years under Sec. 73-12-66.

We trust that your inquiry has been fully answered.

By: Philip R. Ashby

Assistant Attorney General