

## Opinion No. 61-112

October 31, 1961

**BY:** OPINION OF EARL E. HARTLEY, Attorney General Oliver E. Payne, Assistant Attorney General

**TO:** Mr. Walter R. Kegel, District Attorney, First Judicial District, P.O. Box 2081, Santa Fe, New Mexico

### QUESTION

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Is an employee of a municipal housing authority covered by the provisions of the Public Employees Retirement Act?

#### CONCLUSION

Yes, if the particular municipality is an affiliated public employer.

### OPINION

#### ANALYSIS

In answering your question, it is necessary first to examine Section 14-29-5, N.M.S.A., 1953 Compilation, the statute relating to the creation of municipal housing authorities. This section provides that:

"Every city (as herein defined), in addition to other powers conferred by this act, shall have power and is hereby authorized, by proper resolution of its governing body, to create as an agent of such city an authority to be known as the 'Housing Authority' of the city. . . ."

Turning to the Public Employees' Retirement Act we find that a "Public Employer" means the State of New Mexico or any municipality in the State of New Mexico. Section 5-5-1 (E) N.M.S.A., 1953 Compilation. And the same section defines municipality as "any municipality, city, county, and conservancy district in the State of New Mexico, **including the boards, departments, bureaus and agencies of the said municipality, city, county or conservancy district.**" (Emphasis added). Section 5-5-1 (D) N.M.S.A., 1953 Compilation.

Since there can be little doubt that under the terms of Section 14-29-5, supra, a municipal housing authority is an agency of the municipality, the employees of such authority are covered by the Public Employees' Retirement Act unless the particular municipality has chosen to exempt itself from being an affiliated public employer.

Section 5-5-5-, N.M.S.A., 1953 Compilation (P.S.). See Attorney General Opinion No. 60-93. This is true because with one exception not here involved all employees of affiliated public employers must become members of the Retirement Association as a condition of their employment. Section 5-5-6, N.M.S.A., 1953 Compilation (P.S.).