

## Opinion No. 62-140

November 14, 1962

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

**TO:** Mr. John C. Hays, Executive Secretary, Public Employees Retirement Association, Santa Fe, New Mexico

### QUESTION

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Is an elected State official entitled to either duty or nonduty disability benefits from the Public Employees Retirement Association for three periods of illness when he remained on the State payroll and drew full pay for these periods?

#### CONCLUSION

No.

### OPINION

#### ANALYSIS

Section 5-5-17, N.M.S.A., 1953 Compilation, provides that a member of the Public Employees Retirement Association "who becomes totally and permanently incapacitated for duty in the service of his affiliated public employer by reason of a personal injury or disease, which . . . occurred as the natural and proximate result of causes arising solely and exclusively out of and in the course of his employment . . . **shall be retired**" (Emphasis added). Section 5-5-18, N.M.S.A., 1953 Compilation, provides substantially the same thing as to members who incur a disability from causes occurring otherwise than in the course of employment.

Section 5-5-17, supra, also establishes the method by which duty disability annuities are to be computed for members **who retire**.

In no case is a duty disability annuity to be paid prior to the date the person's name last appeared on the affiliated employer's payroll with pay. Section 5-5-17, supra. The same applies to nonduty disability annuities. Section 5-5-18, supra.

"Retirement" is defined in Section 5-5-1, N.M.S.A., 1953 Compilation, as "a member's **withdrawal from the service** of an affiliated public employer with an annuity granted under this act." (Emphasis added).

Reading these various provisions as a whole, it becomes clear that the Public Employees' Retirement Act requires that the member actually be retired prior to being eligible for either a duty or nonduty disability annuity. Since we are informed that the official in question did not at any time retire, and in fact has not yet done so, our conclusion must be that no annuity benefits can be paid to the individual by the Public Employees Retirement Association for the periods of illness about which you require.