

Opinion No. 64-118

September 9, 1964

BY: OPINION OF EARL E. HARTLEY, Attorney General Thomas A Donnelly, Assistant Attorney General

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

QUESTION

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In order for an individual to obtain credit for prior service under the Educational Retirement Act and the Public Employees Retirement Act, is it necessary that he have completed a minimum of one full year with the particular state system under which he proposes to retire, and have completed such service immediately prior to retirement?

CONCLUSION

See Analysis.

OPINION

ANALYSIS

The Retirement Reciprocity Act (Section 5-11-1, N.M.S.A., 1953 Compilation, et seq.) was adopted by the 1963 State Legislature to extend reciprocal retirement credit to individuals who have been employed under both the state public educational system and state public employment. With the passage of this act, an individual may, subject to certain statutory conditions and upon compliance with reasonable regulations established by the respective retirement board in question, obtain the benefit of prior public service credit under the two state retirement systems.

Section 5-11-4, N.M.S.A., 1953 Comp. (P.S.), specifies in part, that in order to secure the benefits of the Retirement Reciprocity Act:

". . . A. A member shall have at least one year of credited service in force under the state system from which he transfers his employment, **and he shall have at least one year of credited service in force for service credited immediately prior to his retirement under a state system.** . . ." (Emphasis supplied)

The underscored portion of the statute discussed above requires that a member seeking to retire under the Retirement Reciprocity Act must have completed a minimum of one year of credited service immediately prior to his retirement under a state system.

The term "state system" as used in the act is defined in Section 5-11-2, N.M.S.A., 1953 Comp., Par. A., as follows:

"As used in this Act:

A. "State system" means the public employees' retirement association of New Mexico or the educational retirement system of New Mexico; . . ."

The definition of "state system" quoted above, we believe, includes service under either of the two state retirement systems and we are of the opinion that under the Retirement Reciprocity Act the year of credited service required to be completed "immediately prior" to a member's retirement may consist of service performed under either the Public Employees' Retirement Act or the Educational Retirement Act, or a combination of service acquired under both acts.

The Retirement Reciprocity Act was enacted to extend to public employees the benefit of increased retirement credit irrespective of the particular state retirement system the individual may have been employed under, and such legislation clearly was designed to permit an individual to receive greater retirement advantages than would otherwise be possible under either of the single state retirement systems. Under such facts, the Retirement Reciprocity Act is remedial in nature and we believe should be liberally interpreted in order to best carry out the announced purposes of the Act. In re **Gossett's Estate** (1942) 46 N.M. 344, 129 P2d 56; and **Lipe v. Bradbury** (1945) 49 N.M. 4, 154 P2d 1000.

Thus, it is our opinion that a member seeking to retire under the Retirement Reciprocity Act must have, immediately prior to his retirement, a minimum of one year's credited service under either of the two state retirement systems or a combination of accumulated service credit under both systems consisting of at least one year immediately prior to application for retirement. In keeping with the Retirement Reciprocity Act such combination of employment would then entitle the person to retire under the provisions of the particular system by which he was last employed immediately prior to his retirement. It should be noted also that in retiring under the particular retirement system permitted by the Retirement Reciprocity Act, compliance also must be had with the particular statutory and administrative regulations governing retirement of persons as set out by the applicable state retirement system under which the member retires.