

Opinion No. 64-94

July 24, 1964

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

TO: Stanley P. Zuris, General Counsel, Albuquerque Metropolitan Flood Control Authority, 216 Fourth Street, N.W. Albuquerque, New Mexico

QUESTION

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Is the Albuquerque Metropolitan Flood Control Authority a public employer within the purview of the Public Employees' Retirement Act?

CONCLUSION

No.

OPINION

ANALYSIS

Only those employees who are employed by an affiliated public employer are eligible for coverage under the Public Employees' Retirement Act.

In Section 5-5-1 (E), N.M.S.A., 1953 Compilation (P.S.) "public employer" is defined as the State of New Mexico or any municipality in the State of New Mexico. Section 5-5-1 (C), N.M.S.A., 1953 Compilation (P.S.) defines "State" as the State of New Mexico, "and includes its boards, departments, bureaus and agencies." It seems clear that the Albuquerque Metropolitan Flood Control Authority does not fall within this definition of "State of New Mexico."

Section 5-5-1 (D), N.M.S.A., 1953 Compilation (P.S.) 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."

In Section 75-36-2, N.M.S.A., 1953 Compilation (P.S.) the Albuquerque Metropolitan Flood Control Authority is declared to be "a body corporate and politic, a quasi-municipal corporation, and a political subdivision of the state." When this definition is read in conjunction with the definition of "municipality" used in the Public Employees' Retirement Act, it is our opinion that the Albuquerque Metropolitan Flood Control Authority is not covered by the Retirement Act.

This office reached the same conclusion in the case of irrigation districts. Opinion No. 6546, dated November 26, 1956. Further, it seems significant to us that the legislature specifically included conservancy districts in the Public Employees' Retirement Act. Had it intended to include all special districts under the Retirement Act, we doubt that it would have enumerated only conservancy districts. It would have either named them all or not named any.

We suggest that this matter be called to the attention of the legislature in order that it might consider an amendment to the coverage provisions of the Public Employees' Retirement Act.