

Opinion No. 65-84

June 1, 1965

BY: OPINION OF BOSTON E. WITT, Attorney General Oliver E. Payne, Deputy Attorney General

TO: Mr. John C. Hays, Executive Secretary, Public Employee Retirement Association, P.O. Box 2123, Santa Fe, New Mexico

QUESTION

FACTS

Quay County is constructing a new hospital in Tucumcari which will be ready for opening later this summer. The present city hospital will close when the new county hospital opens in August. The new county hospital does not desire to be affiliated with the Public Employees Retirement Association due to the large turnover in personnel in hospitals.

QUESTION

Since Quay County is an affiliated public employer, must the new county hospital affiliate and then withdraw from coverage under Section 5-5-5, N.M.S.A., 1953 Compilation, as amended in 1965?

CONCLUSION

See analysis.

OPINION

{*146} ANALYSIS

Section 5-5-5, N.M.S.A., 1953 Compilation, as amended in 1965, provides that:

"Any county hospital, city hospital or city county hospital which is an affiliated public employer may, at any time, by resolution or ordinance adopted by its governing body, withdraw as an affiliated public employer and exempt itself, effective upon the first day of the month following the filing with the retirement board of a certified copy of the resolution or ordinance."

Since the above provision becomes effective on June 18 at 12:01 A.M., and since it appears that there is already a board of trustees for the county hospital, the board can meet after June 18 and adopt a withdrawal resolution. This resolution can then be filed with the Retirement Board and will become effective on July 1. Presumably the hospital

will not have any employees during the period of time from June 18 to July 1. This being the case, we visualize no bookkeeping work at all in this particular withdrawal. Further, in an instance such as this, the word "withdraw" does not mean affiliate and then immediately unaffiliate since the law does not require a useless act.