

Opinion No. 67-78

June 12, 1967

BY: OPINION OF BOSTON E. WITT, Attorney General

TO: Leonard T. Valdes Executive Secretary Public Employees Retirement Association
113 Washington Avenue Santa Fe, New Mexico

QUESTION

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When a member of the Public Employees Retirement Association separates from the services of an affiliated public employer, may such person continue to be a member of the Public Employees Retirement Board?

CONCLUSION

No.

OPINION

{*113} ANALYSIS

The statute specifically involved in answering your question is Section 5-5-6 (4) which provides in pertinent part as follows:

"Except as otherwise provided, should any member separate from the services of {*114} an affiliated public employer, for reasons other than becoming an annuitant, **he shall there-upon cease to be a member**, and the total service credited to him, at the date of his said separation from service, shall be forfeited by him" (Emphasis added.)

There is no way that a person who has ceased to be a member of the Public Employees Retirement Association and who has withdrawn his accumulated deductions can continue to remain as a member of the Public Employees Retirement Board.

This decision does no violence to Opinion No. 59-191. That opinion was based upon Section 5-5-14, N.M.S.A., 1953 Compilation, as it then existed. At that time this section provided that:

"Should any member who has 10 or more years of total service credit leave the service of any affiliated public employer prior to his voluntary retirement date, for reasons other than his death or becoming an annuitant, he shall remain a member during the period of his absence from service **for the exclusive purpose of receiving a superannuation retirement annuity . . .**" (Emphasis added.)

In any event the section referred to in Opinion No. 59-191 has since been amended and no longer reads as it did in 1959. Hence, we are of the opinion that a member of the Association who ceases to be an employee of an affiliated public employer and who withdraws his accumulated deductions is no longer eligible to serve the remainder of his term as a member of the Public Employees Retirement Board.

By: Oliver E. Payne

Deputy Attorney General