

Opinion No. 68-82

August 9, 1968

BY: OPINION OF BOSTON E. WITT, Attorney General

TO: Leonard T. Valdes Executive Secretary Public Employees Retirement Association
P.O. Box 2123 Santa Fe, New Mexico 87501

QUESTION

FACTS

A member of P.E.R.A., employed as a city policeman and making contributions to the P.E.R.A. fund at the required rate of 7%, has taken a leave of absence to serve as head of the municipality's safety division.

QUESTIONS

AG -- 44____

1. Is this member considered a policeman and covered under the benefits provided for police and firemen members, which include survivor's benefits?
2. If so, is this member required to contribute at the rate of 7% or 5% as provided for regular employees?
3. If not, is this member to be covered under P.E.R.A. and covered also under Social Security (Police members of this city are not covered by Social Security)?

CONCLUSIONS

1. See analysis.
2. See analysis.
3. See analysis.

OPINION

{*133} ANALYSIS

Section 5-5-1 J (2), N.M.S.A., 1953 Compilation, defines "Municipal police member" as "any member who is employed as a police officer by any affiliated municipality, and who has taken the oath prescribed for such officers." Since the member in question is on a

leave of absence, it must be concluded that he is not presently employed as a police officer.

Under Section 5-5-7 (4), N.M.S.A., 1953 Compilation:

"Service rendered by a member to any public employer, for which he is entitled to credit as prior service or contributing service shall be considered to have been rendered to the affiliated public employer in whose service he was last employed."

Thus, should any event occur while the member in question is on leave of absence which might entitle him or his survivors to draw on his account, the member or his survivors can only draw on his account as if he had been in his present capacity during his entire service. However, when the member returns to active duty as a police officer, he and his survivors may then draw on his account as if he had continuously been in that capacity.

Since the member in question is not presently a police officer, he is a regular employee as defined {**134*} in Section 5-5-1, supra. Therefore, he must contribute to P.E.R.A. at the 5% rate.

The answer to the third question is "yes." Under the contract regarding P.E.R.A. and Social Security between the State of New Mexico and the Department of Health, Education and Welfare, dated September 29, 1955, employees of the state and its political subdivisions whose employer has elected to come under P.E.R.A., except for policemen and firemen, shall come under Social Security. The member in question being neither a policeman nor a fireman at the present time, must both make contributions to P.E.R.A. and pay Social Security contributions.

By: Roy G. Hill

Deputy Attorney General