

Opinion No. 71-84

July 8, 1971

BY: OPINION OF DAVID L. NORVELL, Attorney General

TO: Mr. Leonard T. Valdes Executive Secretary Public Employees Retirement Association P.O. Box 2123 Santa Fe. N.M. 87501

QUESTIONS

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Can a member of P.E.R.A., who has been appointed to the bench, retire as a regular employee of the State of New Mexico and later return to employment with the State of New Mexico as a District Judge without suspension of his P.E.R.A. annuity?

ANSWER

No.

OPINION

{*122} ANALYSIS

Section 5-5-6- (4) N.M.S.A., 1953 Comp. provides:

". . . in the event a member becomes an annuitant, by reason of his retirement, he shall thereupon cease to be a member for so long as he shall be an annuitant; but if said person including an elected officer is thereafter again employed by a public employer which is or which thereafter becomes an affiliated public employer, said person should again become a contributing member upon such employment or affiliation . . ."

Section 5-5-7.2 N.M.S.A., 1953 Comp. (1970 Int. Supp.) provides:

"Time served in the office of a judge of the District Court or Court of Appeals or Justice of the Supreme Court is not service for any purpose under the Public Employees Retirement Act [5-5-1 to 5-5-23]. This section does not apply to any person who files with the Department of Finance and Administration and unconditional and irrevocable waiver of all benefits of the Judicial Retirement Act [5-5-24 to 5-5-28.1]."

Section 5-5-13 (3) N.M.S.A., 1953 Comp. provides:

"Any superannuation retirement annuity payable to any annuitant shall be suspended if the annuitant is again employed by a public employer which is or which thereafter becomes an affiliated public employer."

The question posed can be resolved by simply reading the New Mexico statutes quoted above. Section 5-5-7.2, **supra**, allows a member of the District Court, Court of Appeals or Justice of the Supreme Court to participate in either the Judicial Retirement Act or the P.E.R.A., but not both at the same time. Section 5-5-13, **supra**, requires that an annuitant be suspended if he is again employed by the public employer. Under Section 5-5-6, **supra**, the individual {*123} may retire, but upon re-employment by a public employer he must become a contributing member for which he will receive additional service credit and re-computation of his annuity.

The judge or justice has a choice. He may belong either to the Judicial Retirement Act or continue as a member of P.E.R.A. It is the opinion of this office that a member of the judiciary may not receive benefits from the Public Employees Retirement Board while serving on the bench.

By: Jay F. Rosenthal

Assistant Attorney General