

**Opinion No. 87-80**

December 30, 1987

**OPINION OF:** HAL STRATTON, Attorney General

**BY:** Andrea R. Buzzard, Assistant Attorney General

**TO:** Mr. Leonard T. Valdes, Executive Secretary, P.E.R.A., P. O. Box 2123, Santa Fe, New Mexico 87504-2123

**QUESTIONS**

May Mr. Joe R. Pena, county treasurer for McKinley County, retire in June, 1988, and resume office as county treasurer without suspension of public employee retirement benefits, if the county commission reappoints Mr. Pena as county treasurer to serve the remainder of his unexpired term, which ends December 31, 1988?

**CONCLUSIONS**

No.

**ANALYSIS**

The Public Employees Retirement Act ("PERA"), Sections 10-11-1 to 10-11-140 NMSA 1978 (1987 Repl.), at Section 10-11-8 NMSA 1978 (1987 Repl.) provides:

C. Except as provided in Subsections D and E of this section, payment of a normal retirement pension shall be suspended at the end of the calendar month of the first calendar year in which a retired member, who is reemployed by or serves a term of office with an affiliated public employer, earns one hundred percent or more of the amount which causes a decrease or suspension of an old age benefit under the federal social security program,

\* \* \*

E. The provisions of Subsection C of this section shall not apply to a retired member who is elected to serve a term as an elected official if the retired member files an irrevocable exemption from membership with the association within thirty days of taking office. Filing of an irrevocable exemption shall irrevocably bar the retired member from acquiring credited service for the period of exemption from membership.

This exception to the PERA annuity suspension provision applies to retirees who, after retirement, become elected officials. The exception is not available to an elected official who retires from his position following re-election to a successive term and before the successive term commences, to permit the official to draw a salary plus retirement

benefits during the successive term. See Op. Att'y. Gen. 87-13. For the reasons stated in that opinion, this exception likewise is unavailable to an elected official who retires from his office and thereafter is reappointed to serve the remaining term of the office from which he retired.

**ATTORNEY GENERAL**

HAL STRATTON Attorney General