

Opinion No. 45-4703

April 28, 1945

BY: C. C. McCULLOH, Attorney General

TO: Wayne L. Mauzy Secretary Museum of New Mexico Santa Fe, New Mexico

{*57} In response to your letter of April 16, 1945, which I held until now, I have before me House Bill No. 72 which is Chapter 50 of the Laws of 1945. In your letter you ask our opinion as to the status of the two employees of the Museum who were heretofore retired under Section 55-2804, etc., of the 1941 Compilation. Section 9, Chapter 50 provides as follows:

"Section 9. Nothing in this act shall adversely affect the emeritus employment status of any retired employee of the public schools or of the institutions, heretofore retired under the provisions of Sections 55-1114 -- 55-1121 or Sections 55-2804 -- 55-2808 of the New Mexico Statutes Annotated, 1941 Compilation, and all such emeritus employees shall be deemed to have been retired under the provisions of this act."

Section 12 of this Act provides in part as follows:

"That sections 55-2804 to Section 55-2809 inclusive of the New Mexico Statutes Annotated, 1941 Compilation, be and the same are hereby repealed; Provided, however, that such repeal **shall not affect the right of any person heretofore retired** under the provisions of any of such sections to continue to receive the retirement pay which may heretofore have been actually awarded under the provisions of the said acts."

Since in Section 9 reference is made to "any retired employee * * * of the institutions", the word "institutions" must refer to the institutions covered by the previous Act and not those covered by Chapter 50. This is so since if any other meaning were adopted, then the provisions of this section would not cover all employees heretofore retired but only a portion of them. This being so, all emeritus employees of the Museum will be "deemed to have been retired under the provisions of this act."

You will note that the savings clause contained in Section 12 does not provide that the provisions of the former law shall be continued in force as to those employees previously retired, but merely that their rights shall not be affected.

In view of the foregoing, it is my opinion that an employee of the Museum heretofore retired will have his retirement pay continued in the same amount as he was previously paid, but that payment should be made out of the funds created by Chapter 50.

{*58} Trusting the foregoing sufficiently answers your inquiry, I am

By ROBERT W. WARD,

Asst. Atty. General