

Opinion No. 45-4705

May 1, 1945

BY: C. C. McCULLOH, Attorney General

TO: Mr. Edward Eyring, President New Mexico Highlands University Las Vegas, New Mexico

{*58} I finally succeeded in getting a copy of the new teacher tenure law which is Chapter 50 of the Laws of 1945.

In your letter of April 12, 1945, you ask our opinion as to whether or not the full salary budget of Highlands, including the salary of the teachers in the training school, should be considered in computing the 3% contribution by the institution to the teachers' retirement fund.

Section 6 of Chapter 50 provides in part as follows:

"The state treasurer shall transfer to a special fund to be known as the Teacher Retirement Fund: Three (3) per cent of the emergency school tax; three (3) per cent of the schools' part of the state income tax; three (3) per cent of the schools' part of the receipts from the mineral leasing act; and an amount equal to three (3) per cent of **said institutions'** and the state board for vocational education **{*59} payrolls to their regular full time employees** during the preceding fiscal year as certified by the proper authorities of the said institutions and the state board for vocational education verified by the state comptroller."

You will observe from the above quoted language that the basis is 3% of the payroll to regular full time employees. No distinction is made between teachers teaching in the University or in the Training School, or, for that matter, no distinction is made between teachers and other full time employees.

In view of the foregoing, it is my opinion that there should be transferred to the State Treasurer 3% of the payroll of Highlands University to its regular full time employees, whether the employees be teachers in the Training School or the University, or other regular full time employees.

I recognize the fact that this causes, to a certain extent, a double payment as to those teachers in the Training School. This is so since by Section 14 of the Appropriation Act allocations for elementary and high school students to normal schools are granted on the same basis as for other elementary and high school administrative units within the county, and since 3% of the Emergency School Tax, 3% of the schools' part of the State Income Tax and 3% of the schools' part of the receipts from the mineral leasing act are deducted prior to allocation to the schools. However, it does not appear that there is any other reasonable construction of the above quoted language.

By ROBERT W. WARD,

Asst. Atty. General