

Opinion No. 45-4731

June 5, 1945

BY: C. C. McCULLOH, Attorney General

TO: Marshall S. Hester Superintendent New Mexico School for the Deaf Santa Fe, New Mexico

{*82} We are in receipt of your letter of June 4, 1945, in which you state that four of your teachers have requested and have been granted retirement, effective June 1, 1945. You state that these teachers have taught the full school year of nine months but have been paid only 9/12 of their salary since they are paid on a 12-month basis. In view of this situation, you ask the following questions:

Whether or not these teachers are entitled to their three months' summer pay even though they then be drawing retirement pay.

In my letter of even date I enclosed a copy of Opinion No. 4213 in which it was held by this office that a teacher who had taught only a portion of the school year was entitled to her prorata share of the three months' summer pay. On the same theory, the retired teachers, having taught the full contract term, would be entitled to their full summer pay even though they were then drawing retirement pay.

In view of the language contained in Chapter 50 of the Laws of 1945 that "all present emeritus employees shall be paid as herein provided after July 1, 1945," you ask whether or not such retired teachers would be entitled to be paid out of the retirement funds created by Chapter 50 even though the institution which had employed them did not elect to come under Chapter 50 of the Laws of 1945.

By Section 6 of Chapter 50 the State Treasurer transfers to a retirement fund 3% of various tax moneys together with 3% of the payrolls of the institutions which elect to come under the act. This section then requires the State Treasurer to distribute to the Treasurers of the several counties and the Treasurers of the several institutions ("several institutions," of course, referring to the several institutions coming within the provisions of this act) their respective shares of the retirement fund.

Section 8 of Chapter 50 requires the several county and institution Treasurers to credit the same to the retirement fund items in their respective maintenance budgets. Disbursements are then made from these funds in the hands of the various institutions and county Treasurers on warrants drawn by the proper officials.

In view of the foregoing, it is apparent that if an institution did not come under the plan, that no moneys from the retirement fund in the State Treasury would be transferred to such institution so that a retired teacher could not be paid out of the retirement fund

created by Section 6. Instead, the employee and the institution would of necessity have to rely on direct appropriation by the Legislature.

Your next question is whether or not a teacher retired before the effective date of Chapter 50 would be entitled to the 50% retirement pay provided by the present law, or the 60% retirement pay provided by Chapter 50. In answer to this question your attention is directed to that portion of Section 2 which provides as follows:

"All present emeritus employees shall be paid as herein provided after July 1, 1945."

See also that portion of Section 9 which reads:

"All present emeritus employees (theretofore retired) shall be deemed to have been retired under the provisions of this act."

In view of the foregoing it is my opinion that a teacher who had been retired prior to the effective date of {*83} Chapter 50 would be entitled to he additional retirement pay provided by Chapter 50.

In your letter it appears that you assume that Sections 55-2804 -- 55-2809 will remain in force so that if the institution did not elect to come under Chapter 50 its teachers could be retired under such provisions. Your attention is directed to Section 12 of Chapter 50 which specifically repeals the above mentioned sections. This repealing section has a saving clause, but the same is limited specifically to the rights of persons retired before the effective date of Chapter 50.

Thus, if an institution does not come under Chapter 50, there will be no law in force which will permit it to retire its teachers except for Section 7 of Chapter 50 which authorizes the carrying of group life insurance and Section 11 which provides for a contributory retirement plan.

Trusting the foregoing sufficiently answers your questions, I am

By ROBERT W. WARD,

Asst. Atty. General