

Opinion No. 45-4741

June 29, 1945

BY: C. C. McCULLOH, Attorney General

TO: Mr. C. R. Sebastian State Comptroller Santa Fe, New Mexico

{*94} We are in receipt of your letter of June 25, 1945 and the enclosed letter from Tom Popejoy, business manager at the University. In connection with Chapter 50 of the Laws of 1945, which is the new retirement act, he asks three questions which are as follows:

"1. What is the definition of a regular, full-time employee? Would this include individuals who worked for a week or a month on a full-time basis, and were then replaced by someone else?

"2. Some of our faculty are employed on the basis of a nine months' term at a given annual salary, and they are then employed for the summer session with extra remuneration. Would the amount of the salary for the nine months' term and the summer session be used in the computation?

"3. We have a large number of individuals employed on projects for which we receive reimbursement from the Federal government. It is our theory here that they would probably be under the Retirement Act, since their employment here counts toward the retirement years."

In answer to his first question, no exact definition can be given of the term "regular full-time employee" which is used several times in Chapter 50. Each case would have to be determined on its individual circumstances. It is, however, apparent that by the term "regular full-time employee" the Legislature intended to distinguish such employees from special employees, temporary employees, and part-time employees. In the case of *Cote v. Bachelder -- Worcester Co. (N.H.) 160 Atl. 101*, the Court said:

"In an industrial community, term 'full time' has acquired definite significance recognized by popular usage. Like terms 'part time' and 'over time', it refers to customary period of work; and all three terms assume that a certain number of hours per day or days per week constitute respectively a day's or week's work within a given industry or factory. 'Full time' in Compensation Law signifies normal and customary period of labor per day or week for kind of work employee performs."

See also *American Tobacco Co. v. Grider*, 47 S. W. 2d 735, 243 Ky. 87, where the Court held that the words "full time" meant a full working day for six days every week of the year, since such was the customary {*95} period of work of employees of the industry. Also see *Aebli v. Board of Education*, 145 P. 2d 601, 619; *Mc-Carty v. School District*, 225 P. 835, 75 Colo. 305.

Thus, it appears that as used in this statute, the Legislature contemplated an employee as being a "regular full time employee" if he worked the hours in the day, the days in the week, and the months in the year customary to school employment. However, the mere fact that an employee, in addition to his school work, has another occupation would not prevent him from being a regular full time employee, if he, in fact, works the customary time. See the case of Johnson v. Stoughton Wagon Co., 95 N. W. 394, 397, 118 Wis. 438., where the court held that an employee gave his full time to the company's service even though he did not devote all his waking hours to such occupation. The Court held this inasmuch as he devoted his entire business day of approximately nine hours and a portion of his evenings to the company's service. Thus, the fact that he at other times of the day attended to other business did not make him less than a full-time employee anymore than if he had devoted such time to recreation.

In the second portion of his first question, Mr. Popejoy inquires with respect to an individual who worked for a week or a month on a full time basis and was then replaced by someone else. This phase of the question is covered in part by the foregoing. Further, if the employee was hired for a week or a month to do a special job, he would not be a regular employee, but rather a special one. If he took a position that was an integral part of the institution and was replaced by someone else, he position would be one held by a regular full time employee so that the 3% contribution provided by Section 6 of Chapter 50 would include the salary to the successive employees holding such position.

The only other phase of the act under which this question would arise would be in computing how many years the person had been employed by the schools of this state. It appears that a portion of a year in which a person was employed by one of the schools of this state could be added to the portion of a year worked at a different time in determining the number of years the person had been employed by the schools of this state.

In answer to Mr. Popejoy's second question, it appears to the writer that the salary of the faculty members should be the total salary received during the year, even though a portion is paid for the teaching of nine months and another portion paid for the teaching of the three months summer session. It appears that this situation is just the same as though one contract were entered into for the combined salary or as though during the term the salary of the teachers were increased.

In answer to his third question, there are only two issues involved: First, is the individual a regular full time employee of the institution? If so, and if such person were employed the required length of time, he would be entitled to retirement.

Secondly, is such person on the payroll of the institution as its regular full time employee? If so, his salary should be included in computing the 3% contribution of the institution as provided by Section 6 of Chapter 50.

Trusting the foregoing sufficiently answers your questions, I am

By ROBERT W. WARD,

Asst. Atty. General