

Opinion No. 46-4963

November 13, 1946

BY: C. C. McCULLOH, Attorney General

TO: Mr. Robert B. Yoder Administrative Director Research & Development Division New Mexico School of Mines Box 6000, Station A Albuquerque, New Mexico

{*283} We are in receipt of your letter of November 12, 1946, in which you state that the Research and Development Division of the New Mexico School of Mines is performing research work for and under contract with the U. S. Navy, under contract dated April 1, 1946. You further state that it has been the assumption of your office that the employees of the Research and Development Division came within the purview of the Teachers' Retirement Act., established by Chapter 50 of the Laws of 1945; and that, in accordance with this assumption, the Research and Development Division has billed the Navy Department for 3% of all payroll costs of its regular full-time employees.

You further state that the Navy Cost Inspector has raised a question as to the eligibility of this item, upon the assumption that the 3% payroll tax is not mandatory under existing law, and consequently is not an essential cost under the contract.

Under Chapter 50 of the Laws of 1945, all regular, full-time employees of state institutions accepting the act are entitled to retirement. By virtue of Section 6 of the Act, the various state institutions were given the power to elect whether to participate in the plan. I am informed by Floyd Santistevan, Director of the Teacher's Retirement Act, that as of January 1, 1946, the Board of Regents of the School of Mines elected to participate in the plan. Since the School of Mines is participating in the plan, Section 6 makes it mandatory upon the part {*284} of the State Treasurer to transfer to the Retirement Fund 3% of the School of Mines' payroll to its regular, full-time employees.

No provision is made in this act allowing an institution to withdraw wholly or in part from the plan, once it has elected to participate.

As regular, full-time employees of the Research and Development Division are employees of the New Mexico School of Mines, it is my opinion that such employees are entitled to retirement, and that it is mandatory upon the part of the State Treasurer to transfer 3% of the salaries paid to such employees.

Hoping the foregoing sufficiently answers your inquiry, I am

By ROBERT W. WARD,

Asst. Atty. General