

**Opinion No. 47-5082**

September 30, 1947

**BY:** C. C. McCULLOH, Attorney General

**TO:** Benjamin D. Luchini, Chairman-Executive Director, Employment Security Commission, 111 S. 6th Street, Albuquerque, New Mexico

{\*93} This will acknowledge receipt of your letter of September 29, 1947 in which you request our opinion as to the meaning of "regular salary" as that term is used in Section 6, Chapter 167, Laws of 1947. (N.M. Public Employees Retirement Act).

Section 6 of the above act provides, in part, as follows:

"Every member of the Retirement Association shall pay into the retirement fund three and one-half per cent (3 1/2%) of his or her regular salary.

(a) Each public employer affiliated with said retirement system shall pay into said retirement fund, monthly \* \* \* an amount equal to three and one-half per cent (3 1/2%) of salaries paid to the employees of said public employer."

"Salary" is defined by the authorities and the courts as "compensation for services rendered." (See Words & Phrases.)

It is my opinion that the phrase "regular salary", as the term appears in Section 6, Chapter 167, Laws of 1947, means the **actual salary** received by any public employee.

Consequently, under the above act, a public employee would contribute 3 1/2% of any amount received by him as compensation for services rendered in any one month. This would include overtime pay. On the other hand, if the employee is on leave if absence without pay for a portion of the month, said employee would pay 3 1/2% only on the amount actually received by him for that month. A public employer of course would use the same basis for making its contribution.

Since the definition to be given "regular salary" is of state-wide importance and since the Public Employees Retirement Association is about to complete its organization, I feel inclined to go beyond your specific request and add that "regular salary" does not include **milage** or **per diem**. The two latter terms do not come within the definition of "Salary". They are reimbursement for expenses incurred.

By WILLIAM R. FEDERICI,

Asst. Atty. General