

Opinion No. 48-5169

September 14, 1948

BY: C. C. McCULLOH, Attorney General

TO: Charles L. Rose Superintendent of Public Instruction Santa Fe, New Mexico.
Attention /- Floyd Santistevan, Director, Teacher Retirement.

{*162} We have your letter of recent date in which you request the opinion of this office on the following question:

"A teacher is drawing compensation from the Federal Government as a result of injuries sustained in active duty. Should this individual draw the full sixty percent of the average of the last five years of full time employment at full time salary, or must that amount paid for compensation by the government be deducted from the retirement computation?"

This matter is covered by Section 55-1118, 1941 Compilation, N.M.S.A. (Pocket Supplement), which provides as follows:

"If any person retired under the provisions of this act shall also be entitled to benefits under any state or **national retirement or old age benefit law**, then the amount to be paid such person under this act shall be only the difference between the amount received under such {*163} other retirement or old age benefit law and the amount provided in this act." (Emphasis Mine.)

The question presented is whether or not the words "national retirement or old age benefit law" include disability compensation received by a veteran from the Federal Government for injuries received while in military service.

Retirement or old age benefit constitutes a pension, which is defined in 48 Corpus Juris, Pensions, Section 1, as "a periodical allowance of money granted by the government in consideration of services rendered or of loss or injury sustained in the public service."

In 38 U.S.C. Sec. 700, it is provided that ". . . monetary benefits other than retirement pay for service connected disability or death shall be designated 'compensation' and not 'pension'." Therefore, since Sec. 55-1118, as amended, contemplates reduction in teacher retirement pay where a **pension** is received from another source, it has no application to compensation received by the retired teacher from any other source, because the words "pension" and "compensation" are not synonymous. See Dickey vs. Jackson, 181 Iowa 1155, 165 N.W. 387, where the court held: "The words 'pension' and 'compensation' are not synonymous . . . the latter is ordinarily a gratuity from the government or some of its subordinate agencies in recognition of, but not in payment for, past services."

Further, even if the payments in question here were to be classified, as a pension, they would still not constitute a retirement or old age benefit law since the compensation is rendered by the Federal Government under the terms of Title 38, U.S.C. which is a veteran's benefit law. It is not a retirement law or an old age benefit law. There is no age requirement as a basis for receiving this compensation or pension, and neither is length of service a factor.

It is, therefore, my opinion that the amount received by a disabled veteran as disability compensation for injuries received while in military service cannot be deducted from the amount due him under the provisions of the Teacher Retirement Act.

By WALTER R. KEGEL,

Asst. Atty. General