

Opinion No. 53-5757

May 25, 1953

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. Floyd Santistevan Director State Teacher Retirement Board Santa Fe, New Mexico

{*156} This will acknowledge receipt of your letter of May 8, 1953, in which you ask our opinion on several questions concerning the applicability of the State Public Employees Retirement Act to personnel heretofore covered by that Act and now covered by the State Teacher Retirement Act as amended by Chapter 57, Laws of 1953.

{*157} The controlling provision of Chapter 57, Laws of 1953, is sub-section (c) of Section 1, which provides:

"Employees covered by this act are hereby exempted from the provisions of all other State Retirement Acts."

You first ask whether it will be compulsory for employees who have heretofore contributed to the State Public Employees Retirement Fund to continue contributions to that fund if they are now covered by the Teacher Retirement Act, and whether such employees can withdraw their contributions heretofore made to said fund. It is our opinion that the above quoted provision clearly gives such employees the right to withdraw from membership under the Public Employees Retirement Act, and that under the provisions of said Public Employees Retirement Act, persons who are not in covered employment may withdraw contributions.

You next ask whether employees who will be covered by the Teacher Retirement Act, as amended, may also continue to contribute to the State Public Employees Retirement fund at their option, and whether the Department of Education, the State Education Retirement Board, and the Office of the State Educational Budget Auditor may in such case pay the matching amount for such employees who elect to also remain in the State Public Employees Retirement plan. We feel that the Legislature, by the use of the word "exempted" in the provision above quoted, intended that persons who might be eligible for retirement under both plans could continue in both at their option. If this were not so, it would appear that the term "excluded" would have been used.

We wish to point out, however, that under the provisions of Section 55-118 of the 1941 Compilation, any person retired under both acts will only be entitled to receive from the Teachers Retirement Act the difference between the amount received under such other retirement act and the amount to which said person is entitled to receive under the Teachers Retirement Act.

It is obvious, we believe, that the various offices mentioned have the authority and the obligation to pay the matching amount to the Public Employees Retirement fund for the benefit of those employees continuing under both plans.

By: Walter R. Kegel

Assist. Attorney General