

Opinion No. 53-5774

June 30, 1953

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. Epigmenio Ramirez Secretary Public Employees Retirement Association Santa Fe, New Mexico

{*174} In your letter dated June 22, 1953, you ask two questions as follows:

1. If a member terminated his employment before Ch. 162, Laws of 1953, became effective and is reemployed after Ch. 162, Laws of 1953, became effective, is he required to pay contributions for the period of his non-employment while Ch. 167, Laws of 1947, was in effect from the date he terminated his employment to the date said Ch. 162, Laws of 1953, became effective in order to reinstate his membership?
2. What is the status of a member who does not have 10 years of service credit and who terminated his employment under Ch. 167, Laws of 1947, and left his accumulated deductions in the Retirement Fund, must he continue making payments into the Retirement Fund in order to retain membership after Ch. 162, Laws of 1953, became effective?

Relative to your first question, under Ch. 167, Laws of 1947, if a member terminated his employment and was later reemployed, he was required to make contributions covering the period of his non-employment by paying an amount equal to the monthly deductions he should have paid had he been employed during the period of his non-employment. However, Section 6.4 of the 1953 Act provides as follows:

"Except as otherwise provided in this Act, should any member separate from the service of an affiliated public employer, for reasons other than becoming an annuitant, he shall thereupon cease to be a member, and the total service credited to him, at the date of his said separation from service, shall be forfeited by him. In the event the said person is reemployed by an affiliated public employer he shall again become a member of the Association. Should his said reemployment occur within a period of 5 years from and after the date he last separated from the service of an affiliated public employer, the total service forfeited by him, at the time of his said last separation from service, shall be restored to his credit: Provided, that the said {*175} member returns to the employees savings fund the full amount of accumulated deductions he may have previously withdrawn therefrom, together with regular interest computed from the date of withdrawal to the date or dates of repayment. In the event a member becomes an annuitant by reason of his retirement he shall thereupon cease to be a member."

The new act omits the requirement for payment of the amount of monthly deductions during the period of unemployment and for that reason, if a person whose employment was terminated prior to the effective date of the 1953 Law is reemployed after the

effective date thereof, he would not be required to pay contributions for the period of nonemployment in the manner required under the previous law.

Answering your second question, Section 2.1 (1), Ch. 162, Laws of 1953, provides for the continuance of the Association including, except as otherwise provided, the continuing of existing membership, rights, service credits, funds, powers and obligations. A person having less than 10 years of service credits under the 1947 Act could maintain his membership during the period of his nonemployment by making the necessary monthly payments and, if such membership was retained and in force on June 12, 1953, the person thereafter would continue to retain his membership under the new law without making any further contributions until such time as he may be reemployed or to meet requirements for retirement. Under the new Act, however, except for disability benefits, a person must have at least 10 years service credit in order to retire at age 65 and 5 years' service credit to retire at age 70, but in the absence of 10 years service credits his membership would be continued until such time as he desires to withdraw his contributions, or retire at age 70 if he is eligible.

By: C. C. McCulloh

Assist. Attorney General