

Opinion No. 53-5791

July 29, 1953

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. F. S. Merriau City Attorney Raton, New Mexico

{*198} This is in reply to your letter of July 17, 1953, in which you request advice from this office as to the interpretation of the provisions of Chapter 162, Laws of 1953, known as the State Retirement Act, and as to the city's liability to pay their retirement contributions.

Since this question affects several cities in the State, we have decided to give you a formal opinion on the questions requested by you in your letter of July 17th. Your first question is: Does the City of Raton come under the new retirement act which is Chapter 162 Laws of 1953? Under Chapter 174 of the Laws of 1949 the City of Raton automatically {*199} became a member of the Retirement Association by its failure to exempt itself.

In Section 2 of the new Act, under the heading of Retirement Association and Retirement Board, is found the following:

"(1) The Public Employees' Retirement Association of New Mexico established by Chapter 167, Laws of 1947, as amended by Chapter 174, Laws of 1949, and since maintained and now existing pursuant to said Act, is hereby designated and continued as the Association for the purpose of this Act, including except as otherwise expressly provided herein, the continuing of existing membership, rights, service credits, funds, powers and obligations."

On page 10 of the Public Employees' Retirement Act under Sections 5 and 6 is found the following:

"5.1 All public employers, as defined in Section 1, shall be affiliated public employers, except as otherwise provided in this section.

"5.2 (1) Any municipality which exempted itself from becoming an affiliated public employer under the provisions of Chapter 167, Laws of 1947, as amended by Chapter 174, Laws of 1949, shall continue to be exempt under this Act.

"5.2 (2) Any incorporated city, town or village in New Mexico, having a population of less than 2000 persons according to United States Census is hereby exempt from becoming an affiliated Public employer; provided that when any such municipality attains a population of 2000 persons according to United States Census it may exempt itself from becoming an affiliated public employer, at any time within a year, by resolution or

ordinance adopted by its governing body and filing a copy of such resolution or ordinance with the Retirement Board within thirty days after the date of adoption thereof.

"5.3 (3) Any public employer that has exempted itself, or is exempt from becoming an affiliated public employer, the said public employer may, at any time, by resolution or ordinance adopted by its governing body, become an affiliated public employer effective at such time as is mutually agreeable between the said public employer and the Retirement Board.

"6.1 Except as provided in Section 6.2 all employees of an affiliated public employer shall become members of the Association beginning with the date their public employer became an affiliated public employer shall become a member of the Association upon his written application filed with the Retirement Board.

"6.2 Any employee in the service of an affiliated public employer at the time of affiliation of such public employer with the Retirement Association may exempt himself from membership in the Association by filing with his City Treasurer, County Treasurer or department head, as the case may be, a written application for exemption, and a copy of the same being filed with the Retirement Board within 90 days from the date of such affiliation. The Retirement Board may exempt from membership employees in occupational {*200} classifications of a part-time, temporary, seasonal or casual nature."

In view of the above quoted sections, coupled with the fact that the City of Raton under the old law, Chapter 174 New Mexico Session Laws of 1949, was a member of the Association, it is the opinion of this office that the City of Raton is a member of the Retirement Association under the new law and all the employees which were members under the old law are members of the Association under the new law, except those 36 employees which you mention in your letter, who are temporary employees and paid on an hourly basis.

It is our further opinion that the street employees who have requested now to come under the Act are entitled to membership in the Association, and the City may be liable for the matching contributions under the law which has been increased to 5% under the new law instead of 3 1/2%.

Your last question is whether or not the City would be liable if they fail to contribute and match the contributions of the employees who are members of the Association, including old and new members. The Municipal Board should include the amount needed to match these contributions in its budget since the city is liable.

Trusting that this fully answers your inquiries, I remain

By: Hilario Rubio

Assist. Attorney General