

Opinion No. 56-6468

June 13, 1956

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. John C. Hays, Administrator, Social Security Division, Public Employees Retirement Assn. of N.M., P. O. Box 2237, Santa Fe, New Mexico. Attention: Mr. Charles C. Staab Administrative Assistant

We have your letter of May 24th in which you requested an opinion from this office as to whether the definition of part-time positions as is found in the proposed agreements with the Regents of the University of New Mexico, can legally be accepted by your office in view of the fact that other institutions of higher learning and political subdivisions have submitted their agreements which contain definitions of part-time positions as defined by your office and as is in conformity with Section 218 of the Social Security Handbook.

We are of the opinion that there is no requirement that there be a uniform definition of part-time employees. We think that each employer can establish a definition for part-time employees as fits his particular situation. As pointed out in Section 218 of the Social Security Handbook,

"Any definition so established will not be questioned so long as is reasonable and is applied uniformly to all employees in the coverage group."

It is readily apparent that what may be a part-time employee for one employer might not be a part-time employee for another. Therefore, there could not be any fixed definition of part-time employee, but each depends upon the type of work required by each employer, and whether the particular service as classified as part-time employment would be actually part-time employment so far as that employer is concerned. The fact that other institutions of higher learning and other political subdivisions have used one definition of part-time employees would not preclude the University of New Mexico from having a different definition of part-time employees so long as such definition was reasonable and is applied uniformly to all employees in the coverage group.

As for the definition which the University of New Mexico uses in its agreement, we would call your attention to a letter dated May 14th, 1956 from Mr. Patrick A. Hebert, Assistant Regional Attorney for Social Security, which thoroughly discusses such definition as is submitted by the University of New Mexico. The University of New Mexico submitted the definition which is used in its agreement to Mr. Hebert for consideration, and he made certain specific suggestions concerning the same. We certainly feel that the suggestions made by Mr. Hebert should be incorporated in this definition in order that there can be no question concerning whether the definition as used by the University of New Mexico will pass and be approved by the Social Security System.

We note that on the agreement enclosed with your letter, that such suggestions have not been incorporated in the definition and therefore it would be our suggestion before approval should be given that the University of New Mexico should be given an opportunity to correct and amend their proposed agreement so as to include the suggestions of Mr. Hebert.

Trusting we have answered your question, we remain

By: Paul L. Billhymer

Assistant Attorney General