Opinion No. 57-134

June 14, 1957

BY: OPINION OF FRED M. STANDLEY, Attorney General Hilario Rubio, Assistant Attorney General

TO: Superintendent Marshall S. Hester, New Mexico School for the Deaf, 1060 Cerrillos Road, Santa Fe, New Mexico

QUESTIONS

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"Under Section 73-12-17, N.M.S.A., 1953 Comp., in computing the retirement benefits for a person over 60 years of age with 15 years service credit, and with an average annual salary for the past 5 years of $ 4800, is such computation made on the basis of 15/20 of 60 percent of the average annual salary for the preceding 5 years, with the limitation of such amount receivable to $ 1800, or is such computation made on the basis of 15/20 of $ 1800?"

CONCLUSION

Retirement benefits should be computed under the formula providing for 15/20 years times 60% of the past five years salary average.

OPINION

ANALYSIS

The pertinent part of § 73-12-17, N.M.S.A., 1953 Compilation, provides that any person entitled to retirement under this section shall be retired as herein provided;

". . . Such persons shall be entitled to receive annually for the remainder of his natural life and beginning at the date of such retirement 60% of the average annual salary paid him on account of such employment during the last five years of full time employment next preceding the date of retirement; Provided that the maximum amount to which any person shall be entitled shall be the sum of $ 1800.00 per annum. When any person who has served in the aforesaid employments for more than fifteen years and less than twenty years, is retired he shall be entitled to receive annually for the remainder of his natural life that proportion of 60% of his average salary for the last five years of full time employment as his years of service bear to twenty years of service. . . ."

In accordance with the above, an employee having twenty or more years service will receive 60% of his average salary earned during the last five years of employment, but not to exceed $ 1800.00. For the employee having less than twenty years service, but

more than fifteen, retirement benefits will be computed by determining, as aforesaid, 60% of his average salary earned during the last five years of employment, and then multiplying this figure by the fraction of years served as related to twenty years. Again, a maximum of $ 1,800.00 applies.

The aforesaid formula may be exampled as followed:

Service - 15 years

Average salary for past five years - $ 4,800.00

60% of $ 4,800.00 = $ 2,880.00

(15 yrs.)<20 yrs.) = 3/4 or 75%

75% of $ 2,880.00 = $ 2,160.00

Maximum retirement allowed - $ 1,800.00