

Opinion No. 57-294

November 14, 1957

BY: OPINION OF FRED M. STANDLEY, Attorney General Robert F. Pyatt, Assistant Attorney General

TO: Mr. John C. Hays, Executive Secretary, Public Employees Retirement Association, P. O. Box 2237, Santa Fe, Mexico

QUESTION

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May one who was appointed by the Governor and who for certain purposes was under the Governor's control be a member of the Public Employees Retirement Association and gain benefits from the Public Employees Retirement Act when at all material times he was paid by the Federal Government?

CONCLUSION

No.

OPINION

ANALYSIS

It is the opinion of this office that the answer to your question is clearly set forth in § 5-5-1, N.M.S.A., 1953 Compilation, particularly subsections 5 and 7, which respectively read:

"5. 'Public employer' means the **state of New Mexico or any municipality in the state of New Mexico.**

7. 'Employee' means any person, including any elected official, who is **in the employ of any public employer and whose salary is paid by by warrant or any other medium from any other income of said public employer.** The term 'employee' shall not include any person who is a beneficiary of any other retirement, pension or annuity plan created and established by the state of New Mexico or any of its political subdivisions." (Emphasis supplied)

Under the language emphasized by us in subsection 7, it clearly appears that the salary must be paid by warrant or other medium from the income of a public employer. Referring to the 5th subsection, we see that a public employer is either the State of New Mexico or a municipality of New Mexico, which, in either event, would exclude the Federal Government.

Consequently, it is clear that the answer to your question must be in the negative.

The correspondence attached to your letter requesting this opinion is returned herewith.