

## Opinion No. 57-85

May 1, 1957

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

**TO:** Honorable Georgia L. Lusk, Superintendent of Public Instruction, Santa Fe, New Mexico

### QUESTIONS

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May the State Educational Retirement Board withhold retirement benefits from retired or emeritus employees, otherwise eligible for said benefits, during periods of time when such employees are holding public school positions and are being paid salaries for the same?

#### CONCLUSION

No.

### OPINION

#### ANALYSIS

The retired or emeritus employees are those who have attained such status under § 73-12-16, N.M.S.A. 1953 Comp.

The fact that a retired school employee is receiving income from another source is no reason to withhold retirement benefits otherwise payable to him. In Opinion of the Attorney General No. 4246, it was held that the law did not **prevent** payment to a teacher or other school employee, who has been retired but subsequently recalled to active duty, his salary in addition to his retirement benefits. While such opinion is not a precise answer to your query, inasmuch as it did not go so far as to hold that retirement benefits **must** be paid when a salary for public school employment is being received, nevertheless we so hold in this opinion, assuming, of course, that funds are on hand for such purposes. We find nothing in the law giving the Board discretion to withhold the retirement benefits when the employee, on retired or emeritus status, is recalled or serves in an active capacity.