

Opinion No. 57-69

April 10, 1957

BY: OPINION OF FRED M. STANDLEY, Attorney General Santiago E. Campos,
Assistant Attorney General

TO: Mr. Wayne L. Mauzy, Acting Director, Museum of New Mexico, Santa Fe, New Mexico

QUESTIONS

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Are employees of the Museum of New Mexico "provisional members" of the Educational Retirement Act as passed by the 1957 Legislature?

CONCLUSION

Yes.

OPINION

ANALYSIS

The 1957 Legislature, under House Bill No. 134, which is Chapter 197, Laws 1957, repealed much of the old Teachers' Retirement Act. And under Chapter 197 many new provisions were enacted. For our purposes, the following are pertinent.

Section 1, subsection C, defines a provisional member as:

"provisional member' shall refer to any person, other than one qualified to be a regular member, who prior to the effective date of the Educational Retirement Act was employed in a position by virtue of which he could have become eligible to acquire retirement or disability benefits under any of the statutory provisions repealed by the Educational Retirement Act, and who has elected, as herein provided, to be covered by the provisions of the Educational Retirement Act."

Regular members, under the new act, are the teaching and administrative employees of the educational institutions of the State and teachers or administrators within the public school system. Thus, employees of the Museum are not regular members. However, under Section 1, subsection C, above, it is noted that provisional members are those who prior to the effective date of the present act were employed in positions which were eligible for benefits under the old act. Referring to the old act, we find that our Legislature in 1947 included the Museum of New Mexico as one of the institutions of

this State whose employees were eligible to take advantage of the old Teachers' Retirement Act. Chapter 74, Laws 1947.

Therefore, we conclude that since the employees of the Museum of New Mexico were eligible under the old law, they are now eligible as "provisional members" under the new Educational Retirement Act which will take effect July 1, 1957.

Your attention is called to § 19 of Chapter 197, Laws 1957. Under this section, those members, who, under the new act, are under a provisional membership, are such automatically. However, these members have a period of one year in which they may elect as to whether or not they desire to continue to be covered under the new act. And if election is made to terminate coverage, that employee may withdraw the contributions that he had made into the fund.