

Opinion No. 64-116

September 8, 1964

BY: OPINION OF EARL E. HARTLEY, Attorney General Thomas A Donnelly, Assistant Attorney General

TO: Mr. Kenneth A. Davis, Director, Educational Retirement Board, Santa Fe, New Mexico

QUESTION

FACTS

One of our members was employed as a teacher from September 1957 through May of 1958. On August 15, 1958, following his termination of employment, the member received a full refund of his contributions in accordance with Section 73-12-50, N.M.S.A., 1953 Compilation. The member did not return to teaching in September of 1958 and on November 12, 1958 he entered military service. The member was honorably discharged on January 12, 1962 and subsequently returned to public educational employment on September 1, 1962. The member has not returned the contributions which he withdrew from the fund, but he does desire credit for military service as set forth in Section 73-12-73, Subsection B, N.M.S.A., 1953 Compilation.

QUESTION

Is such member eligible for such credit?

CONCLUSION

See Analysis.

OPINION

ANALYSIS

The Educational Retirement Act (Section 73-12-34, N.M.S.A., 1953 Compilation, et seq.) permits an individual who has contributed funds from his earnings during employment in the public school system of New Mexico to withdraw from the Educational Retirement Fund the full amount of his contributions. Section 73-12-50, N.M.S.A., 1953 Compilation states in applicable part:

"When the employment of a member is terminated by reason other than retirement or disability, or when a member has exempted himself from coverage hereunder, the member or his beneficiary shall, after filing written demand with the director, be entitled to withdraw from the fund the total amount of the member's contributions. . ."

The act specifies that a member of the Educational Retirement system shall be given earned service credit for the time when the member was a contributing member in employment -- but that as stated in Section 73-12-71, N.M.S.A., 1953 Compilation, earned service credit "shall not be certified for periods of employment the contributions for which have been withdrawn from the fund by the member."

If a member has previously withdrawn his contributions to the fund and subsequently desires to reestablish the period of earned service credit for which he withdrew contributions, Sec. **73-12-72**, N.M.S.A., 1953 Compilation, permits the member to return to the fund for each year of earned service desired "a sum equal to the total member's contributions which were standing to his credit in the fund at the end of the year for which earned service-credit is desired, and an additional sum as interest, compounded annually, from the date the contributions were withdrawn to the date of payment on the amount of the returned contribution at the rate of interest earned by the composite retirement fund during the five-year period immediately preceding the application for such earned service credit."

The Educational Retirement Act (Section 73-12-73, N.M.S.A., 1953 Compilation) permits credit for military service as follows:

"Allowed Service-Credit. -- A member shall be certified to have acquired allowed service credit for that period of time when he was:

. . .

B. Engaged in military service **which interrupted his employment in New Mexico**, as herein defined, if he returned to such employment within eighteen months following honorable discharge. Such credit shall be allowed without contribution.

. . ." (Emphasis supplied).

The above quoted statute provides for allowance of credited service time for the period which a member spent in military service, but such statute clearly contemplates that in order to be eligible for such benefit that the military service "interrupt" his educational employment in New Mexico.

By a well recognized rule of statutory construction all parts of a statute are required to be interpreted in light of their relationship to other portions of the same act. **Reese v. Dempsey** (1944) 48 N.M. 417, 152 P2d. 157; **Janney v. Fullroe, Inc.** (1944) 47 N.M. 423; 144 P2d. 145; **Cox v. City of Albuquerque** (1949) 53 N.M. 334, 207 P2d. 1017; **State v. Wylie** (1963) 71 N.M. 447, 379 P2d. 86.

Careful consideration of the above statutes indicates that if a member of the Educational Retirement system is actually employed by the state public school system and such employment is interrupted by military service, then such person is entitled to be allowed service credit without contribution for the full period of time of such military

service and if such person returns to such employment within 18 months following his honorable discharge.

However, if a person withdraws his contributions from the fund and is not actually employed in the public school system at the time he enters military service, clearly, the Educational Retirement Act does not afford allowance of service-credit for the period of time spent in military service. It would be necessary for an individual desiring to obtain the benefit of prior service credit to make restoration of contributions previously withdrawn and pay the additional interest required; such would not however, even if restoration of contributions were made, afford allowance of service credit for the period of time during which he served in military service if such military duty did not in fact interrupt the prior educational employment.

We therefore conclude under the particular facts presented above, that no allowed service credit is permissible. In every case, however, where a member's educational employment is in fact actually interrupted by military service, the person upon returning to such public employment within 18 months of receipt of an honorable discharge is entitled to allowed service credit for the period of military service, without contribution.