

## Opinion No. 65-80

May 28, 1965

**BY:** OPINION OF BOSTON E. WITT, Attorney General Oliver E. Payne, Deputy Attorney General

**TO:** Mr. Alexander F. Sceresse, District Attorney, County Court House, Albuquerque, New Mexico

### QUESTION

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1. Is the repayment of all contributions previously withdrawn by a member of the Public Employees' Retirement Association a prerequisite for retirement even without credit for the period of employment for which contributions were withdrawn?
2. Does the Public Employees' Retirement Board have the authority to charge four percent interest compounded annually when such repayments are made?

#### CONCLUSIONS

1. No.
2. Yes.

### OPINION

#### {\*140} ANALYSIS

{\*141} Rule 8 of the rules of the Public Employees' Retirement Association provides as follows:

"An applicant for a superannuation annuity will be required to repay all contributions previously withdrawn plus accrued interest compounded at four per cent (4%) annually, to restore the service credit forfeited by such withdrawal. . . ."

This rule was adopted pursuant to Section 5-5-6, N.M.S.A., 1953 Compilation which provides in pertinent part as follows:

"Except as otherwise provided, should any member separate from the services of an affiliated public employer, for reasons other than becoming an annuitant, he shall thereupon cease to be a member, and the total service credited to him, at the date of his said separation from service, shall be forfeited by him. In the event the said person is reemployed by an affiliated public employer he shall again become a contributing

member of the association, and the total service forfeited by him, at the time of his last separation from service, shall be restored to his credit; Provided, that the said member returns to the employees' savings fund the full amount of accumulated deductions he may have previously withdrawn therefrom, together with regular interest computed from the date of withdrawal to the date or dates of repayment."

Stated simply, this Section provides that all service credit is forfeited when a person withdraws from the employment of an affiliated public employer. This also includes all credit earned prior to August 1, 1947 when no contributions were made. If such person withdrew his accumulated deductions, and he later again becomes employed by an affiliated public employer, he may have this service credit restored if he pays back into the fund the amount he withdrew plus four percent interest compounded annually. However, if he does not wish to have such service credit restored, he is not required to as a condition of reemployment or as a condition for retirement. Of course, he must meet all the conditions for retirement without getting any credit for the period of employment for which his accumulated deductions were withdrawn and not repaid.

In your second question you ask whether the Board has the authority to charge four percent interest compounded annually if repayment of withdrawn deductions is made. The answer is yes. As pointed out above, Section 5-5-6, supra, speaks in terms of "regular interest". That phrase is defined in Section 5-5-1(R), N.M.S.A., 1953 Compilation as follows:

"'Regular interest' shall be such rate or rates of interest, compounded annually, as the retirement board shall from time to time determine; Provided, that such rate or rates of interest shall be a multiple of one-quarter of one percent, and shall not be less than one per cent per annum, nor more than four per cent per annum, compounded annually."

In accordance with this authorization the board has determined in Rule 8 that the rate is to be four percent compounded annually.