

## **Opinion No. 65-83**

June 1, 1965

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

**TO:** Mr. John C. Hays, Executive Secretary, Public Employees Retirement Association, P.O. Box 2123, Santa Fe, New Mexico

### **QUESTION**

#### QUESTION

If a county hospital, city hospital or city-county hospital which is presently an affiliated public employer withdraws from coverage under the Public Employees' Retirement Act, are employees thereof entitled upon request to a refund of accumulated deductions?

#### CONCLUSION

Yes.

### **OPINION**

#### {\*145} ANALYSIS

Section 5-5-5, N.M.S.A., 1953 Compilation, as amended in 1965, provides in pertinent part that:

"Any county hospital, city hospital or city-county hospital which is an affiliated public employer may, at any time, by resolution or ordinance adopted by its governing body, withdraw as an affiliated public employer and exempt itself, effective upon the first day of the month following the filing with the retirement board of a certified copy of the resolution or ordinance."

This Act becomes effective on June 18, 1965 at 12:01 A.M., and it is contemplated that some hospitals will desire to withdraw.

You ask whether such a withdrawal as an affiliated public employer entitles an employee of such a hospital to withdraw his accumulated deductions. Our answer is yes.

Ordinarily such deductions can be withdrawn only when the employee terminates his employment. However Section 5-5-9 (3), N.M.S.A., 1953 Compilation provides that:

"Whenever a member shall cease to be an employee **of any affiliated public employer**, for any reason other than his death or retirement, he shall be paid, on demand in writing filed with the retirement board, his accumulated deductions standing to his credit in the employees' savings fund." (Emphasis added).

If the county, city or city-county hospital does withdraw as an affiliated public employer, the member has ceased to be an employee of an affiliated public employer. Accordingly, under the above quoted provisions he is entitled to withdraw his accumulated deductions.

You will note that under Section 5-5-5, supra, any employee of a county, city or city-county hospital, which hospital resolves to withdraw, may elect to continue his coverage under the Public Employees' Retirement Act if he has had five years of continuous employment with the affiliated hospital. Should the employee so elect he must continue to contribute the employee's share and the hospital must continue to contribute the employer's share for that employee.