

## **Opinion No. 67-55**

April 4, 1967

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

**TO:** Mr. Leonard T. Valdes Executive-Secretary Public Employees' Retirement Board  
113 Washington Avenue Santa Fe, New Mexico

### **QUESTION**

#### QUESTION

Is it possible for a Public Hospital which withdrew from coverage under the Public Employees' Retirement Act (except for one person) to again become an affiliated public employer with all of its employees covered.

#### CONCLUSION

Yes.

### **OPINION**

#### **{\*76} ANALYSIS**

The 1965 Legislative Session amended Section 5-5-5, N.M.S.A., 1953 Compilation to provide 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."

{\*77} The Guadalupe General Hospital in Guadalupe County did elect to withdraw as an affiliated public employer in July of 1965. The reason for this withdrawal was that the hospital mistakenly assumed that it could cover its employees under Social Security. This it could not do since Guadalupe County employees are not covered by social security and therefore the County Hospital employees could not have social security coverage either.

One employee remain covered under the Public Employees Retirement Act pursuant to the proviso in Section 5-5-5 D, supra, which reads as follows:

"D. An employee of the county, city or city-county hospital, who has had five years of continuous employment, with the hospital, and who has been enrolled in the public

employees' retirement association of New Mexico during this time, may elect to continue paying under said act by notice to the hospital within six months after the effective date of this amendment. If an employee makes this election, the county, city or city-county hospital shall, in the case of the electing employee, continue to contribute the employer's share as provided in sections 5-5-1 through 5-5-31 New Mexico Statutes Annotated, 1953 Compilation."

This hospital now desires to again become an affiliated Public Employer with all of its employees covered under the Public Employees' Retirement Act (at least the ones that work full time).

Section 5-5-5 B (3), supra covers this situation by providing as follows:

"(3) Any public employer which has exempted itself, or is exempt from becoming an affiliated public employer may, at any time by resolution or ordinance adopted by its governing body, become an affiliated public employer effective upon the first day of the month following the filing with the retirement board of a certified copy of the resolution or ordinance, together with an application to become an affiliated public employer containing such information as the retirement board may, by regulation, require, and following the acceptance and approval by the retirement board of the application. Acceptance and approval of any application to become an affiliated public employer, containing the information required by regulation of the retirement board, shall be mandatory."

The hospital has also asked whether part-time employees must also be covered when the hospital reaffiliates. Under Section 5-5-6, N.M.S.A., 1953 Compilation this is within the discretion of the Retirement Board. The pertinent portion of that Section provides that:

"The retirement board may exempt from membership employees in occupational classification of a part-time nature."

The hospital has also inquired whether it must, if it reaffiliates, pay contributions from the date of withdrawal in July, 1965 or whether the reaffiliation operates prospectively only.

This is also answered by Section 5-5-5 B (3), supra which contemplates that reaffiliation is not effective until the first day of the month following certain events. First the public employer which wishes to reaffiliate must file the resolution or ordinance together with an application to become an affiliated public employer. This application must contain such information as the Retirement Board may require. Reaffiliation is effective on the first day of the month following acceptance and approval of this application by the Retirement Board.

By: Oliver E. Payne

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