Opinion No. 44-4590

September 26, 1944

BY: C. C. McCULLOH, Attorney General

TO: Dean J. W. Branson, New Mexico College of Agriculture and Mechanic Arts, State College, New Mexico

We are in receipt of your letter of September 22, 1944 in connection with your annuity retirement plan; copy of letter from the Aetna Life Insurance Company; the Senate report on the retirement plan, and the plan submitted by the Aetna Life Insurance Company.

Without restating the plan or the objections thereto, it appears to me that one basic question is presented. First a state institution, in setting up an annuity retirement plan under Section 5, Chapter 210 of the Laws of 1941 (Section 55-2808 of the 1941 Compilation), incorporate all the conditions imposed by Chapter 210 as amended by Chapter 41 of the Laws of 1943 as a condition precedent to the right of an employee to benefit under such plan? That is to say, must the institution require that the employee have served 20 years in the schools of the State, the last 10 years being in the institution, have attained the age of 60 or 65 as the case may be, and have been retired before being entitled to any benefits out of the retirement fund or annuity policy?

If this question were answered in the affirmative, then such a plan would amount to a reduction in the salary of every teacher who could not qualify for a pension in the sum of 5% of his salary if he were permitted to recover the premiums paid by him and 10% if he could not. Such reduction would affect nearly every teacher over the age of 45 brought into the State to teach. Further, it would be extremely harsh as to any teacher who died before meeting these conditions even though he had contributed 5% of his salary for many years.

The insurance company apparently relies on the language contained in Section 5 to the effect that the plan shall be "in conformity with the provisions of this act," to bear out their position that such a construction is proper. This is not necessarily so.

A careful reading of the act discloses that while all the sections of the act are germane, in that they have the same purpose, yet several separate and distinct things are provided for which are as follows:

1. Retirement

2. Retirement pensions

3. Disability pensions

4. A contributory retirement plan

5. A contributory retirement annuity

It thus appears that while all the sections of the act should be construed together, that the conditions imposed upon the execution of one of the phases of the act should not be construed as a limitation on the others. It thus would not be said that Section 4, relating to disability pensions, must be complied with before a teacher could obtain the benefits of Section 3 or Section 5, since each section provides a different plan of relief. It appears to the writer that the same theory must be adopted in construing Section 5. The Legislature could not have intended to incorporate the conditions precedent to the right to a pension found in Section 3 into all contributory retirement plans since each section provides for a different scheme of giving security to employees of institutions which while germane, are essentially different. Further, any other construction would make all contributory retirement plans so harsh that they would be unworkable. This could not be so since the Legislature will not be deemed to have done a useless thing.

That the Legislature intended to provide for a separate plan by Section 5 not limited by Section 3 is borne out by the clause, "The regents or other governing body of said institution are hereby permitted to set up **under such rules and regulations as they shall determine** a contributory fund or retirement plan." As Section 3 provides for a complete plan, there would have been no reason for giving the governing body this power to make rules and regulations. Thus, it appears that each of these sections set up a separate and distinct plan. This result is supported in part by Opinion No. 3850 dated July 29, 1941, soon after the Legislature enacted this law.

In view of the foregoing, it is my opinion that the limitations found in Section 3 need not be incorporated in a plan devised under Section 5, and that the plan as submitted by you is legal and proper.

Trusting the foregoing fully answers your question, I am

By ROBERT W. WARD,

Asst. Atty. General