

**Teachers' Retirement Fund—Whether Person Teaching in an Indian School Disqualified From Receiving Benefits of.**

A person otherwise qualified to receive the benefits of the Teachers' Retirement Fund is not disqualified from receiving the same while teaching in an Indian school.

Miss May Trumper,  
Superintendent of Public Instruction,  
Helena, Montana.

My dear Miss Trumper:

You have submitted to this office the question as to whether a teacher, who has taught the required twenty-five years provided for in the Teachers' Retirement Fund Act and is entitled to the Retirement Fund provided for therein, is disqualified from receiving this fund during the time which she is employed in an Indian school.

Section 1130 of the Revised Codes of 1921 provides, in part, as follows:

"If any teacher retired under the provisions of this act, shall be re-employed in the public schools of this or any other state, such teacher's retirement salary shall not be paid for or during such period of employment."

It was evidently the intent of this provision to prevent any teacher,

who had retired, from continuing to teach in the public schools of this or any other state and at the same time draw her retirement fund allowance.

The question, therefore, is: What is a "public school" within the meaning of this section? Section 1 of Article XI of the Constitution makes it the duty of the Legislature to establish and maintain a general, uniform and thorough system of public, free, common schools. Section 7 of Article XI provides that the public free schools of the state shall be open to all youth between the ages of six and twenty-one years. This is also the provision of the statute, Sec. 1056, Revised Codes of 1921.

Section 1053, Revised Codes of 1921, defines a "public school" as follows:

"A public school is hereby defined to be one that is maintained at the public expense in each school district, and under the supervision of the board of trustees, and shall comprise the elementary grades, and may comprise in addition, at option of the board, the kindergarten and high school grades."

Evidently the term "public school," as used in Section 1130, quoted above, was intended to have the meaning assigned to it in this definition.

It is, therefore, my opinion that an Indian school is not a "public school" within the meaning of our statutes, and that a person, otherwise qualified to receive the benefits of the Teachers' Retirement Fund, is not disqualified from receiving the same while teaching in an Indian school.

Very truly yours,

WELLINGTON D. RANKIN,  
Attorney General.