

Pensions—Teachers' Pensions—Leave of Absence.

A leave of absence is not necessary to complete the last ten years of service in this state where there is a break in the teaching service and the teacher does not go outside the state to teach. If he goes outside to teach during the break in service he must obtain leave of absence.

Miss Elizabeth Ireland, September 11, 1931.
State Superintendent of Public Instruction,
Helena, Montana.

My dear Miss Ireland:

You have requested an opinion of this office as to the right of Mr. Gustavus Henry Willman to receive a teacher's retirement salary pension by reason of the following facts:

Mr. Willman, according to his statement of teaching experience, sworn to and on file with the clerk of the teachers retirement board, began teaching in Montana in 1904 and taught consecutively until June 1, 1916. He thereafter taught from September, 1918 to February, 1921, making a total teaching service of two hundred and twenty-five months. At the end of this teaching service, that is, 1922, he made application for and was granted a teacher's retirement pension. At that time the law required twenty-five years of teaching experience, at least fifteen of which were in this state and the last ten years in actual service was required to be in this state unless leave of absence had been obtained from the proper school authorities. Thereafter, Mr. Willman, as I understand it, was elected county superintendent of schools, thereby giving him a class of service recognized under the teachers retirement salary act as counting upon his retirement service. He served in this capacity for about ten years, during which time he did not draw his pension by reason of being in school services.

He is now out of school service and has made application for the payment of his pension. The retirement board has refused Mr. Willman's request on the ground that he was not excused from service by the proper authorities for the years between 1916 and 1918. In other words, the teachers retirement board, as at present constituted, has assumed to set aside the order of the teachers retirement board made in 1922 upon the ground that the board at that time erred in allowing Mr. Willman the pension.

The present retirement board evidently construes the language of section 1125, to-wit: "including the last ten years of actual service, unless leave of absence shall have been granted by proper school authorities," to mean consecutive service. The purpose of this language is to prevent a teacher from abandoning teaching in this state and teaching in another state without obtaining leave of absence. In other words, the language was intended to declare that a teacher of this state, who goes to another state to teach during the last ten years of teaching service, is deemed to have abandoned this state for pension purposes when he leaves the state to teach elsewhere without permission of proper school authorities, whoever they may be.

If a teacher is without a school in this state for any part of his last ten years of actual teaching service and does not go out of the state and teach elsewhere, but later resumes teaching here and completes ten years of teaching service in this state, then this last ten years of teaching service have been in the schools of this state even though there has been a break of one or two years in his teaching service.

Therefore, if Mr. Willman did not teach outside of this state during the time between June 1, 1916, and September, 1918, his pension was properly allowed and if he is not now in teaching service payments should be resumed by the present retirement board.

Very truly yours,

L. A. FOOT,

Attorney General.