

Opinion No. 102**Public Employee's Retirement
System — National Guard**

HELD: Service in the Montana National Guard prior to July 25, 1917, is creditable prior service for the purpose of retirement credit in the Public Employee's Retirement System.

Mr. John F. Sasek
Secretary
Public Employees' Retirement
System

Sam W. Mitchell Building
Helena, Montana

Dear Mr. Sasek:

You have asked my opinion as to the creditability of Montana National Guard Service prior to July 25, 1917, as state service for retirement credit in the Public Employees' Retirement System.

As I understand the facts, a member of the system enlisted in the Montana National Guard on March 27, 1917. On July 25, 1917, the Montana National Guard was called into service by the United States. If service in the Montana National Guard, from the time of the member's enlistment to the time the Montana National Guard was called into the Federal Service, is state service, then that service would be creditable, as well as the service by the member as a member of the armed forces of the United States, after the Montana National Guard was called into the service of the United States.

I call your attention to my opinion of May 23, 1956, in which I held that under the Montana statutes and the Federal Code provisions applicable, the Montana National Guard is an agency and a creature of the State of Montana. No inquiry need be made as to the source of the funds from which the inquiring member was paid for his service as a National Guardsman in the interim between his enlistment and the federalization of the National Guard on July 25, 1917, because under Section 68-102(f), R.C.M., 1947, it is not necessary, in order to be a state employee, that the salary be paid by warrant of the State Auditor. The subsection provides that:

“‘State employee’ means further any employee under direct state supervision or functional state supervision as certified by the head of the state department concerned and approved by the board of the public employees’ retirement system who is paid either fully or in part from the federal funds, but is not subject to the federal retirement system.”

It does not appear that in 1917 there was any provision for Federal Retirement for National Guard members, although, such a Federal Retirement System now exists. That provision for Federal Retirement, presently in effect, excludes National Guard members from participation as State employees in the Retirement System.

In my opinion, the service of the member in the National Guard from March 27, 1917, until July 25, 1917, is creditable prior service.

Yours very truly,
ARNOLD H. OLSEN,
Attorney General.