

Teachers, Retirement of. Public Teachers' Retirement Fund, Right to Benefit Under.

Teachers employed when Chapter 95, Laws of 1915 was enacted, may elect to take advantage of its provisions within such reasonable time as may be fixed by the board.

February 4, 1916.

Hon. H. A. Davee,
Supt. Public Instruction,
Helena, Montana.

Dear Sir:

I am in receipt of your letter of the 3rd instant, requesting my opinion upon the following proposition:

"Does Section 16 of Chapter 95 of the Acts of the Fourteenth Legislative Assembly, limit teachers who were employed in the schools of the state at the time of the approval of the Act in such a way that it is impossible for them to avail themselves of the benefits of the Act unless they deliver a notification to the Superintendent of Public Instruction or to the county superintendent, on or before January 1, 1916, or may they still give a binding notification at a later date?"

Chapter 95, Laws of 1915, is a statute which has for its purpose the welfare of the large body of public teachers who are devoting their lives to the proper training of the youth of our state. It is a declaration of legislative, and consequently of public, policy. It cannot be said that there was any intention on the part of the framers of this law to make any of its provisions, harsh, unjust or inequitable in their practical operation. As to teachers employed at the time of its enactment, the law makers sought to deal with them in a spirit of fairness, for as to them it did not seek to make the law compulsory, and thus perhaps violative of the obligations of the contractual relation existing between teacher and employer. And on the other hand, it can hardly be said that the legislature intended to say to these teachers in effect that they must elect to come within its provisions within a fixed arbitrary time, or be thence forever barred from taking advantage

of the benefits intended to be bestowed.

Section 16 declares that the law shall be binding upon all teachers employed at the time of the approval of the Act, who shall sign and deliver a notification to the Superintendent of Public Instruction, or to the county superintendent of schools, on or before the 1st day of January, 1916. It does not, however, declare in express terms that the Act may not become binding upon those who fail to so elect; yet under a strict construction it might be held to exclude those who fail to elect within the time designated; but a strict construction of this provision of the law would manifestly be harsh and unconscionable, for it would tend to defeat one of the very objects sought to be accomplished, namely to provide a retirement salary for all teachers then in service who should devote twenty-five years of their lives, or at least fifteen years, if they become incapacitated for further duty, to educational pursuits the last ten years of which to be in service in this state (See Sections 13 and 14). As to every teacher the law is intended to operate justly and equitably as to payments into the public teachers' permanent fund, for Section 5 provides that no person shall be eligible to receive the benefits of the Act, who shall not have paid into the proper fund an amount equal to twelve dollars for each year of service up to and including twenty-five years, with certain provisions not necessary here to consider. Under this section, no discrimination is possible as between teachers becoming subject to the law, provided, of course, that a reasonable construction be placed upon Section 16 of the Act. That is to say, a construction which will permit teachers employed when the law went into effect every opportunity to take advantage of the provisions of the Act within such reasonable time as may seem just to the Board. This the Board may and should do under the powers conferred by Section 10 of the Act.

Yours very truly,

J. B. POINDEXTER,

Attorney General.