

Teachers—Teachers' Retirement Act—Acceptance.

Where a teacher who was teaching in the state when the retirement act went into effect failed to accept its provisions by January 1, 1916, she may not thereafter do so until the time limit has been extended.

November 13, 1928.

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

My dear Miss Trumper:

You have requested my opinion on the following matter: Where a teacher who has been teaching in Montana since 1910 and at the time the teachers' retirement act went into effect elected not to come under its provisions, may she now come under the act?

Section 1128 R. C. M. 1921 provides as follows:

"This act shall be binding upon all such teachers employed in the public state or county schools of this state, at the time of the approval of this act, as shall on or before January 1, 1916, sign and deliver to the superintendent of public instruction, or to the county superintendent, a notification that said

teachers agree to be bound by and avail themselves of the benefits of this act."

Section 1129 R. C. M. 1921 provides:

"This act shall be binding upon all teachers elected or appointed to teach in the public schools of this state after the approval of this act, who not being in the service of the public schools at the time of the approval of the act, were not competent to sign or deliver the notification specified in the preceding section."

The teachers' retirement act took effect on March 8, 1915. These sections were part of the original act and have not been amended since the act was adopted. The act did not attempt to compel teachers then teaching to be bound by it, but it gave them until January 1, 1916, within which to elect to give notice that they agreed to be bound by and avail themselves of its provisions.

The question is: What significance did the fixing of this date (January 1, 1916) have as a limitation upon those who did not act within that time? If it was not intended as a limitation upon those teaching in the state at the time it took effect, why was it inserted at all? If it was intended that teachers teaching on March 8, 1915, could teach five, ten or fifteen years thereafter and then avail themselves of the benefits of the retirement act by accepting its provisions, why did the legislature not so provide, by inserting in section 1128 in place of the words "January 1, 1916," the words "at any time thereafter?" We must give to every word in the statute some meaning if it is possible to do so, and the only meaning that can be given to the "January 1, 1916," is a limitation within which teachers desiring to avail themselves of the benefits of the act must act if they act at all.

It cannot be presumed that the legislature intended to give to those who did not aid in putting the act into effect and who did not pay into the retirement fund, and who did not accept the provisions of the act until they were ready to retire and draw out their salary, an advantage over those who helped to put the act into effect and assisted in creating a retirement fund by accepting its provisions within the time allowed and thereafter contributing to it during their teaching service. The legislature can, no doubt, fix the conditions upon which those who did not accept the act by January 1, 1916, may do so at some future time.

It is therefore my opinion that those teachers teaching in the state on March 8, 1915, who did not elect to accept the provisions of the retirement act by January 1, 1916, may not do so thereafter until the legislature has extended the time and fixed the conditions upon which they may do so.

Very truly yours,

L. A. FOOT,
Attorney General.