

Opinion No. 180.

**Teachers Retirement Act—Service,
How Computed.**

HELD: A teacher, to be eligible to retirement pension under the provisions of Section 1125, R. C. M. 1935, need not have taught ten consecutive years, so long as the last ten years of "actual" service was in the State of Montana.

October 16, 1937.

Mr. Ray N. Shannon
State Treasurer
Helena, Montana

My Dear Mr. Shannon:

You have submitted to this office the inquiry as to whether or not a teacher, who has retired under the former retirement act, must teach consecutively during the last ten years of actual service in the State of Montana, unless leave of absence was granted to her by the proper authorities, before she is entitled to receive the benefits of retirement.

Your inquiry pertains to the language used in Section 1125 as follows: "Including the last ten years of actual service." The question being whether the words "actual service" mean consecutive service unless a leave of absence has been granted.

Section 1125 provides that:

"Persons entitled to, and amount of retirement salary. Every public, state or county school teacher who shall have attained the age of fifty-five years and who shall have served as a legally qualified teacher in public, state or county day or evening schools, or partly as such teacher and partly as state or county or city superintendent or supervising executive or educational administrator for at least thirty school years, at least fifteen of which shall have been in the schools, as hereinbefore specified, of this state, including the last ten years of actual service, unless leave of absence shall have been granted by proper school authorities, shall be entitled to retirement, no time included in such leave of absence to be reckoned as time of service. Upon retirement such teacher shall be entitled to receive during life an annual retirement salary of six hundred dollars (\$600.00), subject to the provisions and limitations of Section 1124, payable in installments quarterly by warrants drawn as provided in this act; provided, the teachers in the service of the state at the time of the passage of this act, who shall have served in states other than this, shall at the end of thirty years' service, the last ten years of which shall be in this state as hereinbefore provided, be entitled to the benefits of this act."

The words "actual" and "consecutive" have a wholly different and foreign meaning, and neither is synonymous to the other. Webster's New International Dictionary defines the word "actual" as: "existing in act or reality; any action at the time being; now existing; present." The same authority defines the word "consecutive" as follows: "following in a train, succeeding one another in a regular order, or with uninterrupted course or success; with no interval or break, marked by logical succession."

Said Section 1125 requires that the teacher shall have taught in Montana the last ten years of actual service, unless leave of absence is granted by the proper school authorities, and if leave of absence is granted, the time shall not be included or embraced in the ten years period. A teacher may have taught the last eight years in Montana; she then may have taught two years following in another state, or for that matter any number of years, and following her teaching in another state she may return and teach in Montana an additional period of two years, and in that event she has complied with the statutory provision of having taught the last ten years in the State of Montana, because the eight year period and the two year period which she last taught in Montana aggregate ten years, and complies with the statutory requirement, *supra*.

The words found in the statute as follows: "Unless leave of absence was then granted by the proper school authorities * * * no time included in such leave of absence to be reckoned as time of service," do not restrict, nor was it intended to restrict, the language found in said statute immediately preceding, when the statute used the words, "last ten years." A teacher, other than through her contract, cannot generally be said to have a permanent tenure to teach in a school in Montana. Supposing her contract to teach was for a period of two years, and at the expiration of her term of employment, as provided for in said contract, she left the State of Montana and taught in another state, she would be deemed to have secured a "leave of absence," and of course the period of time she had so departed, during said leave of absence, would not be computed to constitute the ten year requirement. But if she returned and taught

the additional two years, she would have fully complied with the statute.

No particular form of leave of absence is designated. If she departed during a school year, or during the tenure of her contract, then of course she would have to secure consent from the proper school authorities in order to receive a leave of absence.

We find the word "actual" expressly set forth in said statute, but not the word "consecutive," and we cannot read into the statute language which is not present or necessary to give the statute a reasonable interpretation. If the legislature intended the words, "last ten years," to mean the last ten consecutive years, it could easily have expressed itself in such terms. The statute must be interpreted in not only its common sense meaning, but interpreted in a reasonable and fair meaning to the teacher.

Section 1125 has application to the former retirement system, and under the former retirement system every teacher who has attained the age of fifty-five years and who has served as a legally qualified teacher in the schools of this state, or partly as such teacher and partly as a superintendent, or supervising executive, or educational administrator, for at least thirty years, at least fifteen of which shall have been in the schools of this state, including the last ten years of actual service, subject to the leave of absence proviso, and in making up the ten years of actual service if she has aggregated ten years, although an interval exists wherein she has taught upon leave of absence from the state, then she is entitled to the benefits of the former retirement system. In computing said ten years of actual service you shall not compute the same on the basis of consecutive service, and shall exclude any requirement of consecutive service in computing the last ten year period.