

**Opinion No. 195.**

**Teachers' Retirement Act—Prior Service Certificate—Service in Foreign State — Expense Fund — Exemptions—Contributions.**

HELD: 1. On "prior service certificate" teacher may not have credit for service in a foreign state.

2. No teacher member is exempt from paying the \$1.00 annual expense cost.

3. A teacher employed outside of the state during the years 1936-37 cannot receive prior service credit.

4. To be exempt from payment of 5% contribution, teacher member must be not less than sixty years of age and have rendered thirty-five years of service.

November 18, 1937.

Mr. Ray N. Shannon  
State Treasurer and Chairman,  
Teachers Retirement Board  
The Capitol

Dear Mr. Shannon:

You have submitted the following four questions for our opinion:

"1. On a prior service certificate, may a teacher claim credit for teaching service in a foreign country, as for example, teaching in Canada?"

Chapter 87 of the 1937 Session Laws, when referring to "another state" and "outside of the State," has reference to the states within the United States, including the District of Columbia and the territories and dependencies of the United States (see Sections 16, 10713). Therefore, it follows that a teacher may not claim prior service credit for her teaching service in a foreign country.

"2. Can any teacher now employed, who becomes a member of the retirement system, be exempt from the dollar per year expense charge? This particularly arises in connection with teachers with thirty-five years of service, past age sixty who are still employed."

Paragraph (a), under general topic, "Expense Fund," on page 236 of the 1937 Session Laws, provides:

"The retirement board shall determine annually the amount required to defray such expense in the ensuing fiscal year. There shall be deducted from the compensation of each member by the several employers the sum of one dollar for each year, in addition to all other deductions herein provided, which sum shall be transmitted to the retirement board in the same manner as herein provided for the transmission of other member contributions, and such sums so deducted shall become a part of, and be charged to, said expense fund, and shall not become a part of the members' accumulated contributions."

Paragraph (a), under the general topic, "Annuity Savings Fund," on

page 231 of the 1937 Session Laws, provides:

"Each employer shall deduct from the compensation of each member on each and every payroll of such member for each and every payroll period subsequent to the date on which such member became a member an amount equal to five per centum of such member's earnable compensation but no employer shall make any deductions for annuity purposes from the compensation of a member who has attained the age of sixty and rendered thirty-five years of creditable service if such a member elects not to contribute."

While a teacher, who has attained the age of sixty and rendered thirty-five years of creditable service, may elect not to contribute to the annuity savings fund, yet at the same time she is a member under the Retirement Act, and, as such, the statute specifically compels her employer to deduct the sum of one dollar per year to help defray the expense fund of the Act. The purpose, of course, of such contribution is to aid in the administration of the Act, and the member receives, or at least the legislature assumed that she received, some benefit through the administration of the Act, although the member, having arrived at that age and rendered said service, has elected not to contribute to the annuity savings fund.

Therefore, it follows that such teacher cannot be exempt from the dollar per year expense charge.

"3. Can a teacher employed in any state, say Idaho, during 1936-1937, obtain prior service if employed this year in Montana?"

Paragraph (3) of Section 1 of said chapter provides:

"'Employer' shall mean the State of Montana or the board of trustees of any school district employing teachers subject to the provisions of this act; or other agency of and within the State by which the teacher is paid."

So much of paragraph (4) of Section 1 of said chapter, as is necessary for a decision, provides:

"Teacher' shall mean any teacher in the public elementary and high schools of the State, \* \* \*."

Paragraph 7 of Section 1 of said chapter provides:

"'Prior service' shall mean service as a 'teacher,' or in a similar capacity outside the State, rendered prior to the date of establishment of the system, for which credit is allowable as provided in Section 5 of this act."

Paragraph (1) of Section 5 of said chapter provides:

"Under such rules and regulations as the retirement board shall adopt, each teacher upon becoming a member shall file with the retirement board an application showing his date of birth, and such other necessary information as the retirement board may require for the proper operation of the retirement system. If a member was a teacher during the school year immediately preceding the establishment of the retirement system, and becomes a member before the first day of September, nineteen hundred and thirty-eight, he shall itemize on such application all service as a teacher rendered prior to the date of establishment, including service in a similar capacity in other states rendered by him prior to the first day of September, nineteen hundred and thirty-seven, for which he claims credit."

The language in said Section 5 has application to a teacher in the schools of Montana, and she must have been a teacher in the school year immediately preceding September 1, 1937, and have taught such time in the schools of the State of Montana, and if she has complied with such condition, then any prior service in the State of Idaho can be credited to that teacher. While service in the State of Idaho, during the school year 1936-1937, would be a prior service to the first day of September, 1937, the statute does not state that service as a teacher in another state shall be immediately preceding the first day of September, 1937, and it follows that if the service had been rendered during the school years 1935 and 1936, such service would be service prior to the first day of September, 1937, although not service immediately preceding 1936 and 1937.

In view of the definite language of the forepart of said section, which requires the teacher to teach the school year immediately preceding September 1, 1937, our only conclusion must be that if the teacher has taught in the State of Idaho, during the school years 1936 and 1937, then she cannot obtain prior service, if employed this year in Montana.

"4. Is it compulsory for a teacher, with thirty-five years of service and under age sixty, to contribute five per cent of salary, while employed, until age sixty to obtain retirement benefits?"

Paragraph (a), under the general topic "Annuity Savings Fund," as hereinbefore quoted, makes it the duty of the employer to deduct monthly from the payroll of every member, five per centum of her earnings, but no employer shall make any deductions for such purposes from the compensation of a member **who has attained the age of sixty and rendered thirty-five years of creditable service, if such a member elects not to contribute.**

The statute requires that before a member may elect not to contribute, two conditions must exist: First, that she has attained the age of sixty, and, secondly, that she rendered thirty-five years of creditable service. The statute uses the word "and" and not "or." If the teacher has taught thirty-five years, and is under sixty years of age, she must contribute to the annuity savings fund until she reaches the age of sixty, in order to obtain the retirement benefits.