

Opinion No. 204.

**Teachers' Retirement Act—State
Schools—Fort Peck Reserva-
tion—Prior Service Credit.**

HELD: The schools of Fort Peck Reservation being under the exclusive jurisdiction of the federal government, not supported by either county or state taxation, are not state schools within the meaning of Chapter 87, Laws 1937.

2. One who was teaching in schools of Fort Peck during school year of 1936-1937, is not entitled to prior service credit under the provisions of Chapter 87, Laws 1937.

December 2, 1937.

Mrs. Joseph Haughey
1136 W. Kansas Street
Fort Peck, Montana

Dear Madam:

You have submitted to this office the question as to whether or not you are entitled to receive prior service credit, under the teachers' retirement system, for the time you taught school in the Fort Peck district, on reservation, in Valley County, Montana.

From the information disclosed, it appears that you are now teaching in said school, and taught there in the year 1936-1937, and for sometime previous thereto.

Paragraphs 4, 5, 6, and 7, of Section 1, Chapter 87, Session Laws of 1937, provide:

"(4) 'Teacher' shall mean any teacher in the public elementary and high schools of the State, including kindergarten teachers in the public schools, and shall include any school librarian or physical training teacher, principal, vice principal, supervisor, superintendent, county superintendent of schools, and any other member of the teaching or professional staff of any public elementary or high school of this State; provided that no person shall be deemed a teacher within the meaning of this act who is not so employed for full time outside vacation periods. The word 'teacher' shall also include any person employed in the office of or by the superintendent of public instruction in the performance of duties pertaining to instructional

services. In all cases of doubt, the retirement board shall determine whether any person is a teacher as defined in this act.

"(5) 'Member' shall mean any person included in the membership system as provided in Section 4 of this act.

"(6) 'Service' shall mean service as a teacher as described in subsection (4) of this section and paid for by an employer as described in subsection (3) of this section.

"(7) '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."

Paragraphs (1) and (a) of Section 4 of said chapter provide:

"(1) The membership of the retirement shall consist of the following:

(a) All persons who were teachers in the public schools of the state during the school year nineteen hundred and thirty-six to nineteen hundred and thirty-seven, and who continue to be teachers shall become members as of the date of establishment, except that any such teacher may notify the board on or before the thirtieth day of November, nineteen hundred and thirty-seven, in such form as the board may prescribe, that he does not desire to become a member, and in such case the board shall exclude him from the membership."

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

"Membership Application and Creditable Service.

(1) 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 Sep-

tember, 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."

In order to be a member of the system, a teacher must have taught in the public schools of the State of Montana during the school year 1936-1937, and if a person was a teacher during said time she shall be given prior service credit for teaching outside of the state, which would include Fort Peck, for the years prior to September 1, 1937. If the school you taught in was not a public school of the State of Montana, then you are not entitled to such credit.

The facts in relation to the Fort Peck school where you have taught are as follows: No Valley County tax money is spent for the operation of the school. School facilities are provided for by the Fort Peck Recreational Association. The county receives no taxes from property situated within the reservation. The administration of the Fort Peck Reservation, including the schools, is under the exclusive jurisdiction of the federal government, and agencies thereof, and while it is true that Montana educational standards are maintained, yet the State and county educational authorities are excluded from any control.

State v. Bruce, 69 Pac. 2nd 97.

Therefore, it follows that the school wherein you are teaching is not a public school of the State of Montana, and as you have not taught in a public school of the State of Montana during the school year 1936-1937, you are not entitled to prior service credit for the time you taught in the Fort Peck school.