

Opinion No. 245.**Teachers' Retirement Act—Deductions.**

HELD: Deductions shall be made from Teacher members' payroll following entry into system.

February 5, 1938.

Mrs. Angeline Golubin
U. S. Hotel
Butte, Montana

My Dear Mrs. Golubin:

You have submitted the question as to whether or not teachers who did not become members of the state teachers' retirement system September 1, 1937, and have since joined, are required to make payments for the previous months. In other words, is a teacher who joins the retirement system January 1, 1938, required to make contributions from September 1, 1937?

Paragraphs (a), (b), and (c) of Section 4, Chapter 87, Session Laws of 1937, provide:

“(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.

"(b) All persons who become teachers or re-enter the teaching service on or after the first day of September, nineteen hundred and thirty-seven, shall become members of the retirement system by virtue of their appointment as teachers.

"(c) A teacher who shall elect not to become a member as provided in subdivision (a) of this subsection may thereafter apply for and be admitted to membership, but no such teacher shall receive prior service credit unless he becomes a member before the first day of September, nineteen hundred and thirty-eight."

Paragraph (a) of Section 8 of said chapter 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."

Paragraph (a), subsection (5), of said chapter, at page 236, 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 trans-

mitted 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) of Section 10 of said chapter provides:

"Each employer shall cause to be deducted on each and every payroll of a member for each and every payroll period subsequent to the first day of September, nineteen hundred and thirty-seven, the contribution payable by such member as provided in this act."

All persons who are teachers in the public schools of the State of Montana during the school year 1936-1937, and who continue to be teachers shall become members as of the date of establishment, which was September 1, 1937, and a teacher who notifies the board on or before the thirtieth day of November, 1937, may be excluded from such membership. A teacher may re-enter the teaching service after the first day of September, 1937, and become a member of the system.

A teacher who has elected not to become a member of this system may thereafter apply for, and be admitted to, membership, but no such teacher thus admitted shall receive prior service credit unless she becomes a member before the first day of September, 1938.

The statute above quoted expressly provides that the 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 the member's earnable compensation. In other words, if a teacher who has elected not to become a member on September 1, 1937, and thereafter applies for and is admitted to membership, then the 5% deductions shall be deducted from his compensation on the payroll following the date of his re-entry into the membership. In other words, if the teacher elects to re-enter the membership on January 1, 1938, the deduction of the 5% shall be made

February 1, 1938, or the month or payroll following.

In reference to the expense fund of \$1.00 per year which is deducted from the compensation of each member by the several employers, said sum shall be deducted during the ensuing fiscal year regardless of the date the teacher became a member. For instance, if the teacher became a member December 1, 1937, and not on September 1, 1937, having elected not to become a member on that date, and thereafter decided to re-enter the membership, he would pay the \$1.00 expense fee in the same manner as teachers who were members as of date of September 1, 1937.