

Opinion No. 267.

**Teachers' Retirement Act—Service
Credits—How Preserved.**

HELD: 1. A teacher member of retirement system absent from State without pay for more than three years, except by reason of disability, forfeits rights to service credits.

2. A teacher member in Montana, absent from teaching less than three years, may preserve service credits by paying \$1 to expense account.

3. Teacher absent from teaching must continue paying \$1 expense fee.

4. Any period taught in any one year cannot exceed one year's service credit.

5. Retirement Board may establish minimum length of time to be taught to equal one year's service credit.

April 12, 1938.

Mr. Ray N. Shannon
Chairman, Teachers' Retirement
Board
Capitol Building
Helena, Montana

My Dear Mr. Shannon:

You have submitted a number of questions for my opinion in reference to the teachers' retirement system:

1. "May an out-of-state teacher, who thinks she may not return within the next three years after September 1, 1937, pay her dollar each year and thereby protect her prior service rights?"

Assuming that the teacher was a member of the State Teachers' Retirement Act and departed from the State of Montana and was continuously absent from said state without pay for more than three years, unless such absence was caused by personal illness, her membership ceases. (Paragraph 3, Section 4, Chapter 87, 1937 Session Laws.) Having been a member and having forfeited said membership, the teacher cannot maintain or reserve her prior service credit in the State of Montana, unless a case of disability, by the payment of the one dollar fee per year. (Paragraph (c), Section 4; paragraph 1, Section 5; paragraph 5, Section 5; paragraph 7, Section 6, of said Chapter 87.)

It is not reasonable to suppose that the legislature intended to, or did, place a teacher in a position to acquire rights under a teachers' pension retirement act in another state and continue to retain her rights in the State of Montana under the facts as set forth in Question No. 1

2. "May an in-state teacher, who taught in 1936-37 but who was unable to get a school during the year 1937-38, or 1938-39, or up to three years, or who did not teach for some other reason, protect her rights to the bene-

fits of her prior service by paying the \$1.00 for each year as long as necessary to so protect them, as long as it does not exceed three years?"

Paragraph 3 of Section 4 provides:

"The membership of any person in the retirement system shall cease if he shall be continuously absent without pay for a period of more than three years or if in any period of ten consecutive years after he last became a member he shall render less than five years of service as a teacher or if he withdraws his accumulated contributions or retires on a pension or dies, but not otherwise, except that the membership of a teacher who has not withdrawn his contributions and who has not had sufficient service to be eligible for disability retirement shall not be cancelled, provided the member shall prove to the satisfaction of the retirement board that absence from service was caused by personal illness constituting disability."

The teacher's membership continues during her absence from teaching for that period of time as provided for in the above quoted statute, and which covers the time indicated in Question No. 2, and the teacher can preserve her rights by paying the \$1.00 fee, which is part of the expense fund. However, if she is absent under the disability provision of the law as referred to in my answer to your Question No. 1, she would not lose her rights, but maintains them by reason of her absence because of illness or disability. (Paragraph (a), a subdivision under Expense Fund of said Chapter 87.)

3. "In the future, when a teacher, who has been a member and has been teaching, and paying regularly into the System, is unable to get a school or is ill and out, taking advantage of her three-year leave of absence, is she still required to pay the \$1 a year membership fee?"

It is my opinion that under the provisions referring to the establishment of the expense fund, and particularly under paragraph (a) thereof, the member teacher under any condition, is required to continue to pay the \$1.00 a year membership fee. Of course, in the event that she is teaching, the school board must deduct said fee from her salary. The mere fact that

the statute imposes the duty of deducting said fee by the school board from the employee's salary does not, in the event she has no employment, exclude her from the obligation of paying this \$1.00 fee.

By separate letter you have submitted to this office the question as to what length of time a person teaches in each year shall constitute a year's service.

Paragraph (2) of Section 5 of Chapter 87, 1937 Session Laws, provides:

"The retirement board shall fix and determine by appropriate rules and regulations how much service in any year is the equivalent of a year of service, but in computing such service or in computing average compensation, it shall credit no period of more than a month's duration, during which a member was absent without pay, nor shall more than one year of service be credited for all service in any school year."

Any period taught, whether it be nine, eleven, or twelve months, in any one year, shall constitute not more than one year's service. In other words, the maximum credit for any number of months in which a teacher may have taught in any one year shall only entitle her to one year's service credit. However, if a teacher only taught two months, or three months in any one year, the board may by appropriate rules and regulations consider the same less than one year's credit service. The board has the authority to establish the minimum time required necessary to make one year's service credit. The board has the authority, by way of illustration, to establish six months as the minimum period necessary to constitute one year's service credit. The ordinary school in Montana functions and operates for a period of nine months and the board may consider that as constituting one year's service credit. However, even though the teacher taught for eleven months she would only be entitled to the same service credit as though she had taught for nine months, for the reason that the statute provides that no more than one year of service shall be credited for all service in any school year.