

Opinion No. 136.

Teachers' Retirement System—Membership in, State College Employees, Who Qualified for Membership in Retirement System.

HELD: 1. Members of the administrative, instructional and scientific staffs of the State College are eligible to membership in the teachers' retirement system.

2. Actual teaching is not required for membership in teachers' retirement system.

September 14th, 1939.

Dr. A. L. Strand, President
Montana State College
Bozeman, Montana

Dear Doctor Strand:

You have submitted to this office for my opinion an inquiry as to the applicability of the Teachers' Retirement System to certain classes of employees of the Montana State College.

The administrative, instructional and scientific staffs of the Montana State College are generally composed of and include the following: Head Cataloger, Library; Director of Student Health; Treasurer; Acting Librarian; Instructor and Director of Food Service at Dormitory; Assistant in Library; Dean of Women; Assistant Registrar; Registrar and Professor; President; Director of Publications; Assistant Editor of Publications; Director in the Director's office, concerning the Experiment Station Workers; Department of Library-Publications; Department of Agronomy, including an Associate Professor and an Assistant; Department of Botany and Bacteriology, including the Head and an Assistant Professor; Department of Chemistry and Meteorology, including the Head and three Assistant Professors; Department of Entomology; Department of Home Economics, including the Head and an Assistant Professor; Department of Irrigation and Drainage, including an Assistant Professor; Veterinary Research Laboratory, including the Head, an Associate

Professor and a Laboratory Technician; Department of Animal Husbandry, including the Head and an Associate Professor; Department of Dairy Industry; Horticulture Department; Department of Veterinary Research; and various branch, field and range stations; and other similar departments, the duties of which are performed by different employees.

Administrative officials are directly engaged in the actual administration of the affairs of the State College. Their services are required and necessary. They are employed by the State College and subject to the supervision thereof. The same situation applies to the scientific and instructional staffs except as hereinafter qualified.

Included in the administrative, instructional or scientific staffs are other branches of the service which include such officials as County Agricultural Agents, Home Demonstration Agents, Associate and Assistant Agents. Part of these officials, at least, receive their salaries from federal, state and county funds. County Extension Agents devote their entire time to directing an extension program within the county. Agricultural Agents devote their attention to all phases of agricultural work.

Much of the State College work includes other than class room service. All of the employees referred to herein are employed for full-time and do not include clerical or physical plant employees. All of these employees receive their appointments through the State Board of Education, first having been approved by the President of the Montana State College. Their relationship to the State College and their status as teachers thereof may be best illustrated by the following:

"Organization and Cooperative Relationship of Extension Service

"An Act of Congress approved May 8, 1914, and supplemental acts thereto, established cooperative agricultural extension work between the Federal Department of Agriculture and state agricultural colleges. Section 2 of that Act defines the work as follows:

'Sec. 2. That cooperative agricultural extension work shall consist of the giving of instruction and prac-

tical demonstrations in agriculture and home economics to persons not attending or resident in said colleges in the several communities, and imparting to such persons information on said subjects through field demonstrations, publications, and otherwise; and this work shall be carried on in such manner as may be mutually agreed upon by the Secretary of Agriculture and the State Agricultural College or Colleges receiving the benefit of this act.'

"It is thus made clear that the work of the cooperative extension employees, whether county agents, home demonstration agents, boys and girls club agents, or other cooperative extension workers, is educational. These extension workers are public teachers paid with money largely raised from all of the people by taxation and are charged with giving instruction and practical demonstrations in agriculture and home economics. Their work covers the entire rural field, which includes economic production, economic marketing, and the development of better home, community and social conditions.

"As they are public teachers it is not a part of the official duties of extension agents to perform for individual farmers or for organizations the actual operations of production, marketing, or the various activities necessary to the proper conduct of business or social organizations. They may not properly act as organizers for farmers' associations; conduct membership campaigns; solicit membership; edit organization publications; manage cooperative business enterprises; engage in commercial activities; act as financial or business agents, nor take part in any of the work of farmers' organizations, or of an individual farmer, which is outside of their duties as defined by the law and by the approved projects governing their work. They are expected, however, to make available to organizations such information as will be helpful to them and contribute to the success of their work.

"The various Federal laws provide that cooperative extension work shall be conducted in such manner as shall be mutually agreed upon by the Secre-

tary of Agriculture and the State agricultural colleges. By an agreement between these agencies, an extension director located in each state is the representative of both the college and the department. He submits projects for extension work to the Secretary for approval.

—HENRY C. WALLACE,
Secretary of Agriculture."

Paragraph 4 of Section 1, Chapter 215, Laws of 1939, defines a teacher in relationship to State University employees as "any administrative officer or member of the instructional or scientific staffs of the University of Montana; 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."

See Vol. 18, Attorney General's Opinions, No. 128.

Actual teaching is not required. A broader meaning has been extended by the statute than that of actual teaching. The retirement board cannot exclude such employees from membership in the Teachers' Retirement System by establishing rules and regulations because the qualification for membership is statutory and is exclusive. It is true the act permits the retirement board, in case of doubt, to determine whether or not a person is a teacher. Here no doubt exists because the statute has itself defined the word "teacher." Whether or not that definition is in accordance to the accepted meaning of a teacher; that is, a person who actually teaches, or is an arbitrary definition, was within the purview of the Legislature and the retirement board cannot of its own volition set up another or different definition.

Persons occupying the positions above referred to and similar ones, if they possess the other requisite qualifications, are entitled to become members of the Teachers' Retirement System.

In order to expedite the entrance of these persons into the Teachers' Retirement System, you as chief executive of your institution, should submit to the retirement board a statement

showing the name, title, compensation, duties, date of birth, length of service, and such other information as may be required regarding the persons filling the positions herein referred to.