

bers, the board may in its discretion exclude such persons from membership.

September 29, 1939.

Mr. Ray N. Shannon
Chairman of the Board
Teachers' Retirement System
State Capitol Building
Helena, Montana

My Dear Mr. Shannon:

You have submitted the question as to whether or not funds of the federal government paid faculty members of the state college must be considered in computing the total compensation of a teacher. Generally such funds are deposited with the state auditor and dispensed by that office.

Federal funds when appropriated are earmarked for particular purposes. The federal government has made no provision for the diversion of a portion of such funds to meet payments provided for by the Teachers' Retirement Act. Paragraph (a), Section 8, Chapter 87, Laws of 1937, directs each employer to deduct from each and every payroll an amount equal to 5 per centum of the member's earnable compensation. An employer means the State of Montana or the board of school trustees of a school district, "or other agency of and within the state by which the teacher is paid." (Paragraph (3), Section 1, Chapter 215, Laws of 1939.) If the inability to collect 5 per cent of the federal funds injures or prejudices the other members of the System, the retirement board may in its discretion deny those persons whose salaries are partly paid from federal funds the right to become members. (Paragraph (2), Section 4, Chapter 215, Laws of 1939.)

Opinion No. 144.

Teachers' Retirement System—Members, Federal Funds, Earnable Compensation.

HELD: 1. Compensation paid members of the Teachers' Retirement System by the Federal Government as part of their salary, must be excluded in determining the member's earnable compensation.

2. If the inability to collect 5% of the teacher's salary consisting partly of Federal Funds injures other mem-