

**Opinion No. 147.**

**Teachers' Retirement Act—University  
Teachers—Fees, when Collected.**

HELD: 1. Fees for the Teachers' Retirement System cannot be deducted from the salaries of university teachers until they have become members.

2. Membership shall begin when the time expires for the teachers to notify the retirement board that they will not become members.

3. Membership may become retroactive and fees collected for the entire period of membership.

October 5, 1939.

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

My Dear Mr. Shannon:

You have submitted the question as to the proper time to make salary collections for university teachers who are eligible to membership in the Teachers' Retirement System.

The teacher may notify the Teachers' Retirement Board on or before the thirtieth day of November, 1939, that he does not desire to become a member of the System. Such right must be exercised not later than November 30, 1939. The teacher does not become a member of the Retirement System until the final date has expired upon which he must exercise his right not to become a member. (Paragraph (b), Section 4, Chapter 215, Laws of 1939).

If the university teacher becomes a member of the System on December 1, 1939, his status as a member shall then become retroactive as of the first day of September, 1939. Fees for the months of September, October, and November, 1939, may be deducted from the salary of the subsequent month, or pro-rated and deducted from the subsequent months as the board may by rule and regulation prescribe.

Paragraph (b), Section 4, Chapter 202, Laws of 1939, requiring the employer to "transmit monthly a warrant for the total amount of such deduction to the secretary of the retirement board" has no application until the person has actually become a member of the Teachers' Retirement System. The board has no right to authorize deduction of salary fees until the person has actually become a member of the Teachers' Retirement System, which in the absence of express waiver or consent could not occur until December 1, 1939.