

No. 385

**TEACHERS' RETIREMENT SYSTEM—RETENTION OF
MEMBERSHIP—MILITARY SERVICE**

Held: A member of the State Teachers' Retirement System who is inducted or ordered into the military services of the Government of the United States and who, within forty days after he is released from such service, makes the proper written application to the school district by which he was formerly employed—in the event he does not retire on a pension or does not die—may be restored to his former position of employment. In the event he is thus reemployed, he shall be considered to have been on leave of absence or furlough during the time he was in the military services of the Government of the United States and shall retain his membership and status in the Teachers' Retirement System.

March 26, 1942.

Mr. R. W. Harper, Executive Secretary
Teachers' Retirement System
State Capitol
Helena, Montana

Dear Mr. Harper:

You have submitted for my opinion the following question:

“Where a member of the State Teachers' Retirement System has been inducted or ordered into the Military Service of the Government of the United States, what rights does such member retain in said State Teachers' Retirement System?”

The present State Teachers' Retirement System was established by our Legislature by Chapter 87, Laws of 1937, which act has been amended by Chapters 202 and 215, Laws of 1939.

Section 4 of Chapter 87, Laws of 1937, as amended by Chapter 215, Laws of 1939, provides what the membership of the system shall consist of and, under subdivision (3) thereof, provides for the termination of the membership as follows:

“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contributions or retires on a pension or dies, but not otherwise, except that the membership of a teacher who has not withdrawn his contributions and who has not had sufficient service to be eligible for disability retirement shall not be cancelled, provided the member shall prove to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.” (Emphasis mine.)

It will be noted, from the above emphasized matter, that membership ceases:

1. If he shall be continuously absent without pay for a period of more than three years;
2. If in any period of ten consecutive years after he last became a member, he shall have rendered less than five years of service as a teacher;
3. If he withdraws his accumulated contributions;
4. If he retires on a pension;
5. If he dies.

It will be noted the membership of a person who has not withdrawn his contribution and who has not sufficient service to be eligible for disability retirement shall not be cancelled in the event such member shall prove to the satisfaction of the Board that absence from service was caused by personal illness constituting disability.

If the foregoing legislation stood alone, as a result many of the teachers who are or may be inducted or ordered into the military services of the United States Government would close their membership.

The Legislature, having such contingencies in mind, enacted Chapter 47, Laws of 1941. Section 1 applies hereto and is as follows:

"Any person inducted into the land or naval forces of the United States (including the aviation unit of either force) or any member of any reserve component of the land or naval forces, national guard, or retired personnel ordered into the active military service of the United States, who, in order to perform such training, service or active duty, leaves a position, other than a temporary position, in the employ of the State of Montana or any political subdivision thereof, and who

"(1) Receives a certificate of completion of training or service from the proper authorities of the United States Government, and

"(2) Is still qualified to perform the duties of such position:

"(a) If such position was in the employ of the State of Montana or any political subdivision thereof, excluding elective positions, such persons shall be restored to such position or to a position of like seniority, status and pay; provided, however, that such position or department has not been abolished or consolidated."

A school district is included in the foregoing, inasmuch as a school district has been declared by our Supreme Court to be a political subdivision of the State.

"A school district is a political subdivision of the State."

McNair v. School District No. 1, Cascade County, 87 Mont. 423, 288 Pac. 188.

"A school district is a public corporation and a political subdivision of the state of which the board of trustees are directors or managing officers."

State ex rel. School District No. 29, Flathead County v. Cooney, 102 Mont. 521, 59 Pac. (2nd) 48.

Section 2 of Chapter 47, Laws of 1941, is as follows:

"All persons asking restoration to a position in accordance with the provisions of paragraph (a) of Section 1 of this act shall, in order to qualify for the restoration of such position, make application for reemployment within forty (40) days after he is relieved from such training and service. Such application must be in writing and presented to the officer, district, board or employing unit of the State or political subdivision thereof by which such applicant was formerly employed."

Section 4 of Chapter 47, Laws of 1941, provides:

"Any person who is restored to a position in accordance with the provisions of paragraph (a) of Section 1 shall be considered as having been on furlough or leave of absence during his period of training and service in the land or naval forces, shall be so restored without loss of seniority (if seniority rules are applicable in such particular position), shall be entitled to participate in any insurance or other benefits offered by the State of Montana or the political subdivision thereof pursuant to established rules and practices relating to employees on furlough or on leave of absence in effect at the time

such person is ordered into such service, and, except as otherwise provided herein, shall not be discharged from such position without cause within one (1) year after such restoration.” (Emphasis mine.)

It is therefore my opinion a member of the State Teachers' Retirement System who is inducted or ordered into the military service of the Government of the United States and who, within forty days after he is released from such service, makes the proper written application to the school district by which he was formerly employed—in the event he does not retire on a pension or does not die—may be restored to his former position of employment. In the event he is thus reemployed he shall be considered to have been on leave of absence or furlough during the time he was in the military services of the Government of the United States and shall retain his membership and status in the Teachers' Retirement System.

Sincerely yours,

JOHN W. BONNER
Attorney General