

No. 44

**TEACHERS' RETIREMENT SYSTEM—MEMBERSHIP—
REQUIREMENTS—PRIOR SERVICE RIGHTS**

Held: A teacher, a member of the Teachers' Retirement System, who teaches even for a limited period of time in the public schools of Montana so that no continuous absence of more than three years intervenes, preserves her membership and prior service rights.

March 14, 1941

Teachers' Retirement System
Miss Elizabeth Ireland
Chairman of the Board
Helena, Montana

Attention: Mr. R. W. Harper
Executive Secretary

Dear Miss Ireland:

You have submitted the following:

"A teacher, who is now the recipient of an annuity in the amount of \$37.50 per month, based on 36 years of service under the old System, is contemplating the return to the classroom in the hope of gaining a larger annuity under the jurisdiction of the present System.

"As for the legal side of her membership in the Retirement System, she did teach the school year 1936-37 and paid her One Dollar membership fee to join the present System before September 1, 1938, so insofar as her prior service record is concerned, it was intact under the present System until September 1, 1940, which marked the expiration of the three years of absence without pay from the teaching profession. She returned to the classroom in September, 1940, and taught for one week in Prairie County, and then returned to an eastern university to pursue her studies for a Doctorate.

"The question arises whether or not this week of teaching will serve to retain for this teacher her membership with prior service rights."

By referring to Section 4 of Chapter 87, Laws of 1937, as amended by Chapter 215 of the Laws of 1939, under Section 4, and subdivision (3) thereof, we find the events or conditions upon the happening of which the membership of any person in the retirement system ceases:

1. If he shall be continuously absent from teaching 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 render 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.

The membership of a teacher who has not withdrawn his contributions and who has not had sufficient service to be eligible for disability retirement shall not be cancelled; provided the member shall prove to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 foregoing provision sets forth in detail the only contingencies that shall cause the membership to be terminated, and these are exclusive.

The only question which can arise in connection with this case, if any, would fall under No. 1 above—"The membership of any person in the retirement system shall cease if he shall be continually absent without pay for a period of more than three years"—and as this teacher was engaged in teaching in the public schools of Prairie County, Montana, even for the limited duration of time of one week, within the period, the running of the statute stops, as there is no limitation as to the length of time required.

It is therefore my opinion that the teacher in question preserved her membership and her prior service rights by teaching for one week in the public schools of Prairie County, Montana, within the three-year period.

Sincerely yours,

JOHN W. BONNER
Attorney General