

## No. 53

**TEACHERS' RETIREMENT SYSTEM—TEACHERS IN  
FORT PECK—RECREATIONAL ASSOCIATION  
SCHOOLS—STATE SCHOOLS**

**Held:** Teachers in schools conducted, controlled and financed by United States Fort Peck Dam Reservation under Fort Peck Recreational Association, which schools are now within and a part of School District No. 21, Valley County, Montana, automatically become members of Teachers' Retirement System, but no prior service certificate may issue.

March 19, 1941.

The Teachers' Retirement System  
Miss Elizabeth Ireland  
Superintendent of Public Instruction  
State Capitol  
Helena, Montana

Attention: Mr. R. W. Harper, Executive Secretary.

Dear Miss Ireland:

You have submitted the following questions received by you from the Clerk of School District No. 21 in Valley County:

"Beginning on February 15, 1941, the school at Fort Peck, which is at present employing five elementary school teachers, will come under the jurisdiction of School District No. 21, in Valley County as a district school.

"Heretofore, this school has been run by an association and I believe on this account the teachers of Fort Peck were refused admission to the retirement system as of September, 1937.

"None of the present teachers are members, nor have they any desire to join. I doubt that they have ever been given exemption cards. I would like to have you clarify my duty as a clerk in this case. Will they have a choice at this time or do they automatically become members?"

In answering the foregoing, it is well to recall that in 1933 and 1934 the United States acquired a large body of land, located in Valley, McCone, Phillips, Garfield, Petroleum and Fergus Counties, for the purpose of the construction of the Fort Peck Dam. The enclosed territory is known as the Fort Peck Dam Reservation. Over this area, the United States exercised exclusive jurisdiction, during the years here concerned, and established and maintained its own school facilities under the Fort Peck Recreational Association, during the years 1934 to 1939. (*State v. Bruce*, 104 Mont. 500, 69 Pac. (2nd) 97.)

Paragraphs 3, 4, 5, 6, and 7 of Section 3 of Chapter 215 of the Laws of 1939 are as follows:

- "(3) The retirement board shall fix and determine by appropriate rules and regulations how much service in any year is the equivalent of a year of service, but in computing such service or in computing average compensation, it shall credit no period of more than a month's duration, during which a member was absent without pay, nor shall more than one year of service be credited for all service in any school year.
- "(4) Subject to the above restrictions and to such other rules and regulations as the retirement board shall adopt, said board shall verify as soon as practicable the statement of service submitted.
- "(5) Upon verification of the statement of service submitted, the retirement board shall issue to each member who was a teacher in the public elementary or the high schools during the school year immediately preceding the date of establishment of the retirement system and becomes a member before the first day of September, nineteen hundred and thirty-eight, and to each member who was a teacher in the University of Montana during the school year nineteen hundred and thirty-eight to nineteen hundred and thirty-nine, and becomes a member before the first day of September, nineteen hundred and forty, a prior service certificate certifying to the aggregate length of prior service as a teacher and to the aggregate length of such service in a similar capacity outside of the State for which the member is entitled to credit. In such prior service certificate, the member shall be credited up to the nearest number of years and months with all service as a teacher prior to September 1, 1937, and with all service not exceeding ten years in a similar capacity in other states, and with all service for which credit is allowable as provided in Subsection (2) of this Section.
- "(6) So long as membership continues, a prior service certificate shall be final and conclusive for retirement purposes as to such service unless thereafter modified by the retirement board upon application made by the member within one year after the date of issuance or modification of a prior service certificate or upon the discovery by the retirement board of an error or fraud. When membership ceases such certificate shall be void. Should

membership be resumed by the teacher, such teacher shall enter the system as a teacher not entitled to prior service credit, except as provided by Subdivision (7) of Section 6 of this Act.

- "(7) At retirement the creditable service of a member on which his retirement allowance shall be based, shall consist of the membership service rendered by him since he last became a member and also if he has a prior service certificate, which is in full force and effect, the service certified on his prior service certificate."

Paragraphs (1) (a) and (c) of the Teachers' Retirement Act, as amended by Section 2 of Chapter 215, Laws of 1939, provide:

- "(1) The membership of the retirement system shall consist of the following:
- (a) All persons who were teachers in the public elementary and high schools of the State during the school year nineteen hundred and thirty-six or nineteen hundred and thirty-seven, and who continue to be teachers shall become members as of the date of establishment except that any such teacher may notify the board on or before the thirtieth day of November, nineteen hundred and thirty-seven, in such form as the board may prescribe, that he does not desire to become a member, and in such case the board shall exclude him from the membership.
  - (c) All persons who become teachers or re-enter the teaching service in the public elementary or high schools on or after the first day of September, nineteen hundred and thirty-seven, and all persons who become teachers or re-enter the teaching service in the University of Montana on or after the first day of September, nineteen hundred and thirty-nine, shall become members of the retirement system by virtue of their appointment as teachers."

Therefore, it will be seen that, in order to be a member of the retirement system, a teacher must have taught in the public schools of the State of Montana during the school year 1936-1937, and such a teacher would be given prior service credit as provided in Section 5, (4) of Chapter 87 of the Laws of 1937.

From the foregoing, it is apparent the teachers engaged by the Fort Peck Recreational Association were not teachers in the public elementary or high schools of the State of Montana during the period required by the Act. It follows that, not being qualified to become members, such teachers are not entitled to prior service credit.

It is further my opinion such teachers will automatically become members of the teachers' retirement system, upon the incorporation of the schools in which they are teaching into School District No. 21 of Valley County, Montana. Such teachers will be in the same status as teachers entering the teaching profession after September 1, 1937.

Sincerely yours,

JOHN W. BONNER  
Attorney General