

Opinion No. 58

Membership in Teachers' Retirement System—County Superintendent of Schools, clerk in office of.

Held: Clerk in question in the office of county superintendent of schools may not be a member in the Teachers' Retirement System.

May 24, 1943.

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

Dear Mr. Harper:

You have requested my opinion concerning the following facts:

A clerk in the office of the county superintendent of schools has applied to the Teachers' Retirement Board for a membership in the retirement system with prior service rights. She has been employed since 1930 in administrative work in the superintendent's office and her teaching certificate expired in that year.

This is the question to be answered:

Is a clerk in the county superintendent's office entitled to membership in the retirement system?

It is first important to determine if a clerk in a county superintendent's office is a teacher.

Section 1 of Chapter 215, Laws of 1939, defines a teacher under the act, and provides in part as follows:

"Teacher' shall mean any teacher in the public elementary and high schools of the state, and the University of Montana, . . . including all kindergarten teachers in the public schools, and shall include any school librarian or physical training teacher, principal, vice principal, supervisor, superintendent, county superintendent of schools, and any other member of the teaching or professional staff of any public elementary or high school of this state, . . . The word 'teacher' shall also include any person employed in the office of or by the superintendent of public instruction in the performance of duties pertaining to instructional services. In all cases of doubt, the retirement board shall determine whether any person is a teacher as defined in this act." (Emphasis mine.)

It is to be noted the quoted section provides county superintendents of schools are classed as teachers and, under Section 2 of Chapter 215, Laws of 1939, would be entitled to membership in the retirement system. The fact the county superintendent is named, but no mention is made of the clerk in the county superintendent's office would preclude her from participating in the benefits of the retirement system and shows the legislative intent to exclude the clerk. A different situation arises in regard to the superintendent of public instruction, as "any person employed in the office of or by the superintendent of public instruction in the performance of duties pertaining to instructional services" may be a member.

Section 975, Revised Codes of Montana, 1935, as amended by Chapter 20, Laws of 1939, authorizes the county superintendent of schools to appoint a clerk, but does not require such a person to have a Montana certificate as it does in the case of a deputy. This would indicate the legislature did not regard the clerk in the county superintendent's office as being in the teaching profession.

Section 2 of Chapter 215, Laws of 1939, p. 576, provides in part:

"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. . . .”
(Emphasis mine.)

In accordance with the facts you have given me and the foregoing quoted section leads to the conclusion the clerk's membership in the Teacher's Retirement System has terminated—even though she had a membership at the start of the clerkship—because of the lapse of more than ten years since she was a teacher as defined in Section 1, Chapter 215, Laws of 1939.

From the foregoing it is my opinion that the clerk in question may not be a member of the teachers' retirement system.

Sincerely yours,
R. V. BOTTOMLY
Attorney General