

Opinion No. 5.

Retirement Board—Teachers' Retirement—Benefits—Joint Survivorship.

Held: A member of the Teachers' Retirement System who notified the board of his retirement by letter dated August 10, must be considered under the act to have retired September 10, and his failure to indicate to the board the manner in which he wished to show his benefits until September 30, 1944, fixes the date of the benefits to be realized as of September 30, 1944.

January 6, 1945.

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

Dear Mr. Harper:

You have requested my opinion concerning the following facts:

A member of the retirement system terminated his employment in May, 1944, and in extensive correspondence with you, advised you he had resigned his teaching employment. In a letter dated August 10, 1944, he said, "As my plans now are, I have resigned my teaching position and I do not plan on teaching any longer, and plan on leaving Montana, and felt that it would be to my advantage to settle this matter at this time rather than later." In a formal application dated September 30, 1944, the member decided upon a joint survivorship annuity with his wife. The member died October 10, 1944.

Under these circumstances, the member in question had in fact retired when he resigned his position in May, 1944, but the earliest notification to the board was in a letter dated August 10, 1944. Under the provisions of subsection 1, Section 6 of Chapter 87, Laws of 1937, the earliest date of retirement is thirty days after application to the board. It is reasonable to assume the member intended his retirement date to be as soon as possible inasmuch as he had terminated his employment several months previous. It logically follows that September 10, 1944, must be taken as the retirement date, but his failure to make election as to the rights he wished to receive until September 30, 1944, necessitates the conclusion the joint survivorship must be dated as of September 30, 1944.

It is therefore my opinion that a member of the Teachers' Retirement System, who notified the board of his retirement by letter dated August 10, must be considered under the act to have retired September 10, and his failure to indicate to the board the manner in which he wished to show his benefits until September 30, 1944, fixes the date of the benefits to be realized as of September 30, 1944.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General