

and who withdraw their accounts after July 1, 1945.

- (2) No interest could be refunded to persons who become members of the retirement system after July 1, 1945, and later withdraw their accounts, no provision being made for payment of interest under Chapter 137, Laws of 1945.

December 20, 1948

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

Dear Mr. Harper:

You have requested by opinion on the following:

November 29, 1948, the Supreme Court of Montana rendered its decision in *Clarke v. Ireland, et al.* The Court there held that Florence Clarke, a public high school teacher, during 1936-1937, was entitled to withdraw all amounts standing to her credit in the annuity savings fund, together with three-fourths of the accrued interest thereon, pursuant to Chapter 87, Laws of 1937. Mrs. Clarke was allowed three-fourths of the interest to July 1, 1945, and three-fourths of the interest accruing on contributions standing to the credit of her individual account from July 1, 1945, to date of withdrawal.

Chapter 137, Laws of 1945, was held unconstitutional in so far as it purported to deprive the plaintiff of interest.

You present two questions arising from the administration of the Teachers Retirement System as the law now stands. Those questions, which relate to interest payments, are:

1. What refund of interest should be made to persons who become members of the Retirement System on or after September 1st, 1937, (and before July 1, 1945) and withdraw their accounts after July 1, 1945?

Opinion No. 153

**Public Employees Retirement System,
Withdrawals, Retirement
Withdrawals**

Held: (1) Refund of three-fourths of the accrued interest on contributions to date of withdrawal should be made to persons who become members of the retirement system on or after September 1, 1937, (and before July 1, 1945)

2. What refund of interest should be made to persons who become members of the Retirement System after July 1, 1945, and later withdraw their accounts?

As was pointed out in the Clark case, *supra*, under section 4, Chapter 87, Laws of 1937, persons who were teachers in the public schools during the school year 1936-1937 could exercise the option of staying out of the retirement system. Since the contribution was optional and purchased on annuity, as distinguished from a forced contribution to a pension fund, the Court held in the Clarke case, a contractual relationship was established which the Constitution of the United States and the Constitution of Montana forbade disturbing.

By sub-division (1) (b) Section 4, Chapter 87, Laws of 1937:

"All persons who become teachers or re-enter the teaching service on or after the first day of September, nineteen hundred and thirty-seven, shall become members of the retirement system by virtue of their appointment as teachers."

The compulsory membership provision remained unchanged in the amendment contained in Chapter 215, Laws of 1945.

As pointed out in the Clarke case, *supra*, under chapter 87, Laws of 1937, section 1 (12) and section 6 (8) (a), "when 'accumulated contributions' were demanded and withdrawn for any purpose other than retirement, interest at three-fourth the regular rate was to be computed and paid to the withdrawing member". With the passage of Chapter 137, Sections 1 (12) and 6 (8) (a), Laws of 1945, "accumulated contributions" was redefined to provide three-fourths of the interest should be placed in the pension accumulation fund instead of being paid to the withdrawing members, where withdrawal was for cause other than retirement or death.

Thus the problem as to those teachers employed on or after September 1, 1937, and before July 1, 1945, becomes a matter of determining whether they entered the retirement system under contract, despite compulsory member-

ship. If they were contracting parties, their contracts must stand.

In *Trumper v. School District No. 55*, 55 Mont. 90, 173 Pac. 946 (1918), the Montana Supreme Court had before it Chapter 95, Session Laws of 1915, "The Teachers' Pension Law." Section 4 of the Act provided for a deduction of \$1.00 from each month's compensation of each teacher to be placed in the public school teachers' permanent fund. Section 16 provided teachers employed at the time of the approval of the Act, could be bound by it by assisting thereto on or before January 1, 1916. Under Section 17 it was binding upon all teachers elected or appointed after the approval of the Act.

At page 93, the Court stated the legal relation between the state (through the school boards) and teachers is one of contract. After the approval of the act, the teachers could enter or refrain from entering the contract to teach knowing of the deduction for pension. To teach, acceptance of the Act was compulsory for those contracting after its approval, but they could refrain from contracting.

At page 94, the Supreme Court took this view of the application of the act:

"The deductions are by consent or contract in all cases, the mode of assent only being different as between teachers having contracts when the Act went into effect and those who contract after the approval of the Act and in contemplation of its terms." (Emphasis supplied)

Thus the ultimate power of election, whether to enter the contract, was the basis for holding that a compulsory deduction was the foundation for a contract.

Apply the rule of the "*Trumper* case to your first question, a contract arose here by virtue of the election to re-enter or commence teaching after the enactment of Chapter 87, Laws of 1937. Refund of three-fourths of the accrued interest on contributions should be made to persons who became members on or after September 1st, 1937, (and before July 1,

1945) and withdrew their accounts after July 1, 1945.

In view of the answer to your first question, the answer to the second follows as a matter of course.

Persons who became members of the retirement system subsequent to July 1, 1945, and later withdrew their accounts had contracts which incorporated the 1945 Act. The 1945 law provided for repayment **only of contributions** (with interest going to the pension accumulation fund) where withdrawal from the system was for causes other than death or retirement. Hence, no interest would be payable to persons withdrawing their accounts where such persons came into the system on or after July 1, 1945, no provision being made in the 1945 Act therefor.

It is my opinion:

(1) Refund of three-fourths of the accrued interest on contributions to date of withdrawal should be made to persons who become members of the retirement system on or after September 1, 1937, (and before July 1, 1945) and who withdraw their accounts after July 1, 1945.

(2) No interest could be refunded to persons who become members of the retirement system after July 1, 1945, and later withdraw their accounts, no provision being made for payment of interest under Chapter 137, Laws of 1945.

Sincerely yours,
R. V. BOTTOMLY
Attorney General