

Held: That the member is granted an absolute right to make an election or revoke or change a previous election and may elect to come under any one of the options, at any time, until the first payment on account of any retirement allowance is made, such last written and duly executed election filed with the board shall be binding on the member, the beneficiaries, and the board, provided, however, that in the event the said member dies after retirement and within thirty (30) days from the date upon which his election or changed election is received at the office of the Retirement System in Helena, then said election is void and of no effect, and the death shall be considered as that of a member before retirement.

December 28, 1948

Mr. Fergus C. Fay, Secretary
Montana Public Employees
Retirement System
412 Power Block
Helena, Montana

Dear Mr. Fay:

You have submitted to this office the following question for an official opinion:

"Does Chapter 212, Laws of 1945, grant to a member of the Montana Public Employees Retirement System the right to make an election under Section 25 thereof; if so, when does such election become binding upon such member and upon the Board."

In answering your foregoing question, it is well to quote and keep in mind the purpose and intent of the legislature in enacting this legislation.

Section 1 of the Act provides:

"The purpose of this Act is to effect economy and efficiency in the public service by providing a means whereby employees, who become superannuated or otherwise incapacitated may, without hardship or prejudice, be replaced by more capable employees, and, to that end, providing a retirement system con-

Opinion No. 155

Retirement, Public Employees

sisting of retirement compensation and death benefits." (Emphasis supplied)

Section 25 of the Act is rather ambiguously drawn and is as follows:

"Section 25. **Until the first payment of account of any retirement allowance is made, and subject to the conditions that, if he die after retirement and within thirty (30) days from the date upon which his election or changed election is received at the office of the retirement system in Helena, then said election is void and of no effect, and the death shall be considered as that of a member before retirement. A member of a beneficiary may elect, or revoke or change a previous election prior to the approval of the previous election, to receive the actuarial equivalent of his retirement allowance as of the date of retirement, in a lesser retirement allowance, payable throughout life with one of one following options.**" (Emphasis supplied)

Then, follows the options, any of which a member may elect.

The meaning and intent of Section 25, Supra, is made clear by re-arranging the wording of the Section as follows:

Until the first payment on account of any retirement allowance is made, a member may elect, or revoke or change, a previous election prior to the approval of a previous election, to receive the actuarial equivalent of his retirement allowance as of the date of retirement, in a lesser retirement allowance, payable throughout life with one of the following options. However, in the event the member dies after retirement and within thirty days from the date upon which his election, or changed election, is received at the office of the Retirement System in Helena, then, and only then, said election is void and of no effect, and the death shall be considered as that of a member before retirement.

It is, therefore, apparent, and it is my opinion, from the intent and wording of the foregoing that the member is granted an absolute right

to make an election or revoke or change a previous election, and may elect to come under any one of the options, at any time, until the first payment on account of any retirement allowance is made, such last written and duly executed election filed with the board shall be binding on the member, the beneficiaries, and the board, provided, however, that in the event the said member dies after retirement and within thirty (30) days from the date upon which his election or changed election is received at the office of the Retirement System in Helena, then said election is void and of no effect, and the death shall be considered as that of a member before retirement.

The only approval the board may or is required to give, is the ministerial act or duty of approving the mathematical calculations of the benefits to which the member is entitled and the payments to be made in accordance with the members most recently dated, written, duly executed election on file with the board at the time of the member's retirement.

Sincerely yours,
R. V. BOTTOMLY
Attorney General