

Mr. John F. Sasek
 Secretary
 Public Employees' Retirement
 System
 Sam W. Mitchell Building
 Helena, Montana

Dear Mr. Sasek:

You have asked me whether, for the purposes of the application of Chapter 270 of the Session Laws of 1955, and the Agreement between the State of Montana and the Secretary of Health, Education and Welfare the positions of County Superintendent of Schools, State Superintendent of Public Instruction, the professional staff of the State Superintendent of Public Instruction and teachers in custodial institutions are positions covered by the Public Employees' Retirement System.

This question becomes important, I understand, because some of the people filling the positions enumerated in the first paragraph, do not hold membership in the Public Employees' Retirement System, but instead, hold membership in the Teachers' Retirement System. If the positions themselves are not included within the Public Employees' Retirement System, there is no machinery set up by which the occupants of the positions may participate in the referendum required under the Social Security Act.

In my opinion, the positions enumerated above are covered by the Public Employees' Retirement System. Chapter 68-102, R.C.M., 1947, Subsection (f), says:

“‘State employee’ means any person employed by the state in any capacity whatever, and whose salary is paid either by warrant of the state auditor, and from the fees or income of any department or agency of the state, excepting all elective and all appointive officers. . . .”

The members of the professional staff of the Superintendent of Public Instruction and teachers in the custodial institutions are persons whose salaries are paid by warrant

Opinion No. 103

Public Employees' Retirement System — Teachers' Retirement System — Social Security

HELD: For the purpose of Social Security coverage under Chapter 270, Laws of 1955, and the agreement between the State of Montana and the Secretary of Health, Education and Welfare, the positions of State Superintendent of Public Instruction, County Superintendent of Schools, the professional staff of the State Superintendent of Public Instruction, and teachers in custodial institutions are positions covered by the Public Employees' Retirement System.

of the State Auditor and from the fees or income of the department of the state by which they are employed. There is no language at all in Chapter 68 that makes any exception as to these positions.

Section 68-202, as amended, re-enforces this view. It reads:

“(a) From and after July 1, 1955. All employees shall become members on the first day of appointment.”

County Superintendents of School and the State Superintendent of Public Instruction are elective officers. Their positions come under the Public Employees' Retirement System. Under Section 68-203, R.C.M., 1947, whoever fills those positions may, under that section, file an election with the Board of Administration to become a member of the System, the section reading, so far as here pertinent:

“The following employees shall not become members of the Retirement System: (a) Elective officers, other than elective officers who filed with the Board of Administration an election in writing to become members;...”

Under this section then, the positions of County Superintendents and State Superintendent are covered by P.E.R.S., the same as all other elective positions. It may be that the holders of the positions may not have filed with the Board of Administration an election in writing to become members, but that does not make the positions any the less ones within the coverage of the Public Employees' Retirement System.

In my opinion, therefore, the enumerated positions come within the Public Employees' Retirement System, and where the County has by referendum approved coverage under the Social Security Act, the positions of County Superintendents are covered by the Act. All the other enumerated positions are covered as the result of the entry

of the State into the Agreement with the Secretary of Health, Education and Welfare.

Very truly yours,
ARNOLD H. OLSEN,
Attorney General.