

Opinion No. 35**Section 68-501 (h), Revised Codes of Montana, 1947—Public Employees Retirement System**

Held: A public employee may fulfill the three (3) year membership service required by Section 68-501 (h), RCM, 1947, by making retroactive payment at the time he elects to qualify his prior service.

November 12, 1957

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

Dear Mr. Sasek:

You ask if a public employee must first elect membership and thereafter be employed for three (3) years before he can seek retirement credit for prior service under the Public Employees Retirement System.

Section 68-501 (h), RCM, 1947, as amended, enumerates the conditions to receiving credit for prior service. That part of the section pertinent to this inquiry provides:

"Credit for any prior service, not previously granted, shall be granted to a member upon request for retirement provided that the member has a total of not less than ten (10) years of creditable state service of which not less than three (3) years have been as a contributing member of the retirement system and the retirement allowance does not include credit for all state service prior to July 1, 1945, or in the case of a contracting city prior to the date of the contract, or July 1, 1947, whichever is earlier. Proper certification of such service must be furnished."

This statute then requires that the applicant for prior service show ten (10) years of creditable state service of which "three years have been as a contributing member."

'Creditable' is not the most precise word that could have been selected to describe this service. Its dictionary definition is in the sense of credible which plainly is not its sense in this statute. However, we can safely say that it refers to all state service for which credit may be had, rather than in the past sense of credited. By using creditable rather than credited it indicates that when the public employee applies for prior service credit that he need not at that time have been officially credited with ten (10) years state service. If the service has been rendered it can be credited, it is thus creditable.

Of the ten years service required by the statute three must be membership service, that is service rendered after the inception of the retirement system for the agency involved, which with some exceptions is July 1, 1945 for state employees and July 1, 1947 for employees of political subdivisions.

The same standard that applies to the ten years state service applies to the three years membership service here. The greater includes the less. (Sec. 49-128 RCM, 1947) It must be creditable.

This result is in harmony with the purpose and objects of the Public Employees Retirement Act. The law requires that in construing statutes we construe them liberally with a view to effect their objects and to promote justice (Sec. 12-202, RCM, 1947).

The declaration of the legislature on the spirit and policy of the law is conclusive (Shields v. Shields 115 M. 146, 139 Pac. (2d) 528). The spirit and policy of the Public Employees Retirement Act is stated in Section 68-101, RCM, 1947, to be:

"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 em-

ployees, and to that end providing a retirement system consisting of retirement compensation and death benefits."

This purpose is promoted by finding that the three years of membership service may be qualified retroactively.

It is therefore my opinion that under Section 68-501 (h) RCM, 1947, as amended, a public employee may fulfill the three year membership condition by making retroactive payments at the time he elects to qualify his prior service.

Very truly yours,
FORREST H. ANDERSON
Attorney General