

Opinion No. 52**Teachers Retirement Act—Retirement Payments, Teachers—State
Income Tax, Exemptions—Annuities—Pensions**

Held: Payments made to retired teachers under the teachers retirement system are exempt from the state income tax and need not be reported as income for state income tax purposes.

May 22, 1958

Mr. J. Hugh McKinny
Executive Secretary
The Teachers Retirement System
State of Montana
Helena, Montana

Dear Mr. McKinny:

You have asked whether payments made to retired teachers under the state teachers retirement system are subject to the state income tax.

Section 75-2713 of the 1947 Revised Codes of Montana (Sec. 13, Ch. 87, L. 1937), a part of the teachers retirement act, provides:

"Exemption from taxation, execution and assignment. The pensions, annuities, or any other benefits accrued or accruing to any person under the provisions of this act and the accumulated contributions and cash and securities in the various funds created under this act are hereby exempted from any state, county or municipal tax of the state of Montana, and shall not be subject to execution, garnishment, attachment by trustee process or otherwise, in law or equity, or any other process whatsoever and shall be unassignable except as in this act specifically provided."

The terms "annuity" and "pension" as they apply to the teachers retirement act are defined in parts (16) and (17), respectively, of Section 75-2701, RCM, 1947, as follows:

(16) "Annuity" shall mean payments for life derived from the accumulated contributions of a member as provided in this act.

(17) "Pension" shall mean payments for life derived from money provided by the employer as defined in this act.

It will be noted these two terms, as defined by the act, refer to **payments** made under the act. These are the only payments made to beneficiaries of the act.

In the light of these definitions, Section 75-2713, *supra*, excludes by its plain terms all payments made to retired teachers under the act from **any** state, county or municipal taxes of the state of Montana. These terms are unequivocal and unambiguous and therefore do not require, nor should they be subjected to, any form of statutory construction, for no rule of statutory construction is more fundamental than the rule that so long as the language of a statute is plain and unambiguous, it is not subject to interpretation or open to construction, but must be accepted and enforced as written (*Sheridan County Electric Co-Op v. Montana-Dakota Utilities Co.*, 128 M. 84, 87; 270 P. 2d 742). In giving effect to a statute we are primarily concerned with carrying out the intent of the legislature. Legislative intent is inferred **first** from the plain meaning of the words it has used, and this meaning must be resorted to before resorting to rules of statutory construction (*McNair v. School Dist. No. 1 of Cascade County*, 87 M. 423, 426; 288 P. 188; 69 A.L.R. 866).

As the state income tax had been in existence for at least four years at the time Section 75-2713, *supra*, was enacted, it must be assumed the legislature was cognizant of this form of state taxation at the time it wrote this section and intended to exempt payments under the retirement act from the income tax, as well as all other taxes, by the use of the word "any." If this section conflicts with the general provisions of the income tax law enacted in 1933 it supercedes that law to the extent necessary to eliminate any inconsistency between

the two laws (*Pioneer Motors v. State Highway Commission*, 118 M. 333; 165 P. 2d 796). I find no subsequent law amending or repealing this section.

Over and above the manifest and conclusive intent of the legislature evidenced by the language of Sections 75-2713 and 75-2701, *supra*, we must keep in mind the general intent of the legislature in enacting the teachers retirement act as a whole and attempt to give full effect to that intent. It is clear the act was intended to provide old age security for those who have spent their productive years educating our children at salaries which are often barely above the subsistence level. In effect, the legislature was recognizing the state's unpaid and unpayable debt to those who insure our future by training our young people. In order to assure the maximum benefit of the pension-annuity plan comprehended by the act, Section 75-2713, *supra*, was enacted to protect the payments and funds available to retired teachers not only against state taxes of all kinds but against execution, garnishment, attachment by trustee process or any other legal process whatsoever.

In a word, it was the clear intent of the legislature to maintain the benefits available under the act inviolate and undiminished and to insure them against the incursion of all extraneous claims. It is that clear intent we must adhere to and implement wherever and whenever possible.

I conclude, therefore, that payments made to retired teachers under the teachers retirement system are exempt from the state income tax and need not be reported as income for state income tax purposes.

Very truly yours,
FORREST H. ANDERSON
Attorney General