

**Opinion No. 94****Vested Right, Creditable Service—Teachers Retirement System, Public Employees Retirement System****Held: Creditable service earned and transferred from the Public Employees Retirement System can be used to secure a vested right under the Teachers Retirement System.**

January 2, 1959

Mr. J. Hugh McKinny  
Executive Secretary  
The Teachers Retirement System  
Capitol Bldg.  
Helena, Montana

Dear Mr. McKinny:

You ask whether credit earned under the Public Employees Retirement System can be used to obtain a vested right when transferred to the Teachers Retirement System.

The statutes do not use the term "vested right", but it is commonly used in the administration of both acts to mean the minimum length of service required to qualify for retirement upon reaching retirement age. That requirement under each system is ten years of creditable service.

Each system defines creditable service differently. Yet the Legislature in authorizing reciprocity of credits and providing for the transfer from one system to the other of contributions and service credits has not qualified the service credits transferable or the extent of reciprocity

to be accorded the service. In fact the statute (Sec. 68-1318, RCM, 1947) provides that in determining eligibility the system "shall take into account the entire length of service rendered by such person for which he shall have been granted credit under both of said systems." Section 68-1319 provides that both prior and membership service shall be transferred.

In practice the PERS does use creditable service transferred from the Teachers Retirement System for qualifying service. That department has advised me that they accept the transferred credit as certified to them. As an agency charged with administration of a law the construction they place on the law merits respectful consideration. (State ex rel. Ebel v. Schye, 305 Pac. (2d) 350). Such a construction has the further support in the rule that pension statutes are to be liberally construed. (Benedict v. Board of Police Pension Fund, 35 Wash. (2d) 465, 214 Pac. (2d) 171, 27 ALR (2d) 992.)

It readily suggests itself that the teaching vocation is made more attractive by that construction and that such an objective was intended by the Legislature.

Therefore, since the reciprocity statutes (Sec. 68-1317 to 68-1320) provide transfer for all credits and since these sections do not limit the effect to be given by one system for service earned under the other and since a legislative objective is thereby served, it is my opinion that Public Employees Retirement System service can be used to earn a vested right under the Teachers Retirement System.

Very truly yours,  
FORREST H. ANDERSON  
Attorney General