

Opinion No. 11**TEACHER'S RETIREMENT ACT; Credit for out-of-state service**

—Sections 75-2705 (3), 75-2705 (9) and 75-2707 (1) (a), Revised Codes of Montana, 1947.

HELD: A teacher may receive credit for out-of-state teaching employment for superannuation retirement benefits under the Teachers' Retirement System only if that employment occurred prior to his last ten years of service within the state of Montana.

July 22, 1963

Mr. J. Hugh McKinny, Executive Secretary
Teachers' Retirement System
Mitchell Building
Helena, Montana

Dear Mr. McKinny:

You have advised me that a professor at Montana State University was granted a two year unpaid leave of absence in order to

teach in a special project outside the United States. The professor in question will soon be eligible for superannuation retirement and you wish to know if he may contribute to the Teachers' Retirement System for these two years and have them considered as part of his creditable service for the purpose of computing his retirement benefits.

Paragraph (9) of Section 75-2705, R.C.M., 1947, provides:

"Any teacher who has become employed as a teacher in Montana subsequent to September first nineteen hundred and thirty-seven may receive credit for service for out-of-state teaching employment provided (a) that he contributes to the retirement fund five per cent (5%) of the salary for each year claimed based on the first year's salary earned in Montana; and (b) that the maximum number of such years shall not exceed ten (10) and that a year out-of-state employment shall be equivalent to one year membership service in Montana, and (c) that payment of such contribution shall be made in a lump sum or in installments as agreed between such teacher and the retirement board."

However, paragraph (1) (a) of Section 75-2707, R.C.M., 1947 provides:

"Any member who has completed ten years of creditable service, the last ten years of which shall have been in this state, and who has attained the age of sixty may retire from service, if he files with the retirement board his written application setting forth the fact of his retirement."

Thus, while Section 75-2705 (9) allows up to ten years credit for service for out-of-state teaching employment, this is limited by Section 75-2707 (1) (a), which requires that the last ten years of creditable service must be within this state.

It is, therefore, my opinion that a teacher may receive credit for out-of-state teaching employment for superannuation retirement benefits under the Teachers' Retirement System only if that employment occurred prior to his last ten years of service within the state of Montana. In the present situation, the professor in question would have to teach an additional ten years in Montana,

in order to receive credit for these two years of out-of-state teaching employment.

The fact that this professor was still technically a member of the University faculty during his two year absence is of no importance because Section 75-2705 (3), R.C.M., 1947, specifically provides that in computing service for retirement purposes, the Teachers' Retirement Board "shall credit no period of more than a month's duration during which member was absent without pay."

Very truly yours,

FORREST H. ANDERSON
Attorney General