

Opinion No. 14

**PUBLIC EMPLOYEES RETIREMENT SYSTEM; Withdrawals—
Section 68-404, Revised Codes of Montana, 1947—Section 68-
701 (m), Revised Codes of Montana, 1947.**

**HELD: Persons who are retired or are still actively engaged in
state service are not entitled to receive a refund of part of
their normal contributions to the Public Employees Retirement
System.**

August 14, 1963

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

Dear Mr. Sasek:

You have requested my opinion on the following questions:

(1) May a member of the Public Employees Retirement System who has retired apply for and receive a refund of one-fourth of his normal contributions to the system?

(2) May a member of the Public Employees Retirement System apply for and receive a refund of one-fourth of his normal contributions to the System while still actively engaged in state service?

Your question apparently arises from Section 68-404, Revised Codes of Montana, 1947, which provides:

“Each member and each person retired shall be subject to all provisions of this act and to the rules and regulations adopted by the board of administration. Any person who is retired and any person who is credited with less than ten (10) years of public service and who renders less than five (5) years of service in any period of ten (10) consecutive years, or withdraws more than one-fourth ($\frac{1}{4}$) of his normal contributions, ceases to be a member.”

It is contended that this statute gives a member of the System the right, at any time, to withdraw up to one-fourth of his normal accumulated contributions. With this contention I cannot agree. Section 68-804 deals only with termination of membership. The right to withdraw contributions is governed by Section 68-701 (m), Revised Codes of Montana, 1947, which provides in part that:

“From and after July 1, 1955, should the state service of a member be discontinued otherwise than by death or retirement, he shall after the date of discontinuance, be paid such part of his contributions as he demands.”

The conditions prescribed by this statute as prerequisite to the right of a member to withdraw any portion of his contributions are clear, viz., his state service must have been discontinued for some other reason than death or retirement.

It is thus clear that neither a person who has retired or is still actively engaged in state service is entitled to receive a refund of

any part of his normal contributions to the Public Employees Retirement System. I so hold.

Very truly yours,

FORREST H. ANDERSON
Attorney General