

VOLUME NO. 34

Opinion No. 32

PUBLIC EMPLOYEES' RETIREMENT SYSTEM - Deposit of contributions withdrawn from the Teachers' Retirement System; Transfer of credits and equities from the Teachers' Retirement System. Sections 68-1317, 68-1318, 68-1319, 68-1320, R.C.M. 1947.

HELD: A former teacher may deposit with the Public Employees' Retirement System contributions formerly withdrawn from the Teachers' Retirement System, together with interest, upon becoming employed in a position covered by the Public Employees' Retirement System.

January 13, 1972

Mr. Lawrence P. Nachtsheim
Administrator
Public Employees' Retirement System
1712 Ninth Avenue
Helena, Montana 59601

Dear Mr. Nachtsheim:

You have asked my opinion on the following factual situation:

A former teacher, who at the time of employment as a teacher was a member of the Teachers' Retirement System, and who is presently employed in a position covered by the Public Employees' Retirement System, wishes to redeposit the amount withdrawn from the Teachers' Retirement System when he quit teaching and receive credit for his teaching service toward his eventual retirement from PERS.

You inquire if he can accomplish this without first becoming a member of the Teachers' Retirement System again.

The primary provision of the Revised Codes of Montana dealing with the reciprocity of credits between the two systems is found in section 68-1317, R.C.M. 1947, which provides:

“Any person who has acquired, or shall acquire, credits or equities toward a retirement allowance, death benefit, or refund of contributions under the public employees’ retirement system of Montana, or under the teachers’ retirement system of the state of Montana, who terminates his employment in a department, agency or division of the state of Montana, or in a school, college or university in the state of Montana, covered by any of said systems and shall become employed in a department, agency, division, school, college or university covered by another of said systems, shall be entitled to have applied in such other system all his said credits or equities in accordance with and to the extent set forth in this act, provided that the same shall not have been forfeited by withdrawal unless the forfeited credits shall have been reinstated as by law provided. Any person who is concurrently employed by employers under both of said systems shall be entitled to establish credits or equities in each of said systems in accordance with and to the extent set forth in this act.”

Section 68-1318, R.C.M. 1947, provides:

“Eligibility of any such person for a retirement allowance, or for a death benefit or for a disability benefit, or for a refund of contributions shall be governed by the provisions of the act creating the system to which the person last made contributions, provided however that said system, in determining such eligibility, 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, R.C.M. 1947, provides:

“Upon transfer of an employee from one system to another, his accumulated contributions or accumulated normal contributions, and his service credits, both prior and membership, as certified by either system shall be transferred to the system to which the employee transfers.”

Section 68-1320, R.C.M. 1947, provides:

“The amount of any refund, retirement allowance, death benefits or disability allowance to which any such employee shall be entitled, shall be determined according to the rules of the system to which he last contributed.”

Applying the above-quoted sections to the fact situation set out in your letter, two possible situations arise:

1. The former teacher can again become a member of the teachers' retirement system, even for one day, and immediately transfer his credits and contributions to PERS after redepositing them with teachers' retirement;

2. The former teacher can redeposit the amount he withdrew from teachers' retirement with PERS and receive credit for his former years of teaching service toward his eventual retirement from PERS.

The provisions of the Revised Codes of Montana clearly provide that a person who has acquired or shall acquire credits or equities in one system who terminates employment in a capacity covered by the provisions of that system and becomes employed in a capacity which is covered by the other system, may transfer credits from one system to the other. Thus, there would appear to be no difficulty in such a transfer if the employee transfers immediately from a position covered by one system to a position covered by another system.

Section 68-1317, R.C.M. 1947, provides in part, however, that the person transferring "shall be entitled to have applied in such other system all his said credits or equities in accordance with and to the extent set forth in this act, **provided that the same shall not have been forfeited by withdrawal unless the forfeited credits shall have been reinstated as by law provided. . . .**"

Under the provision above, there would appear to be no difficulty in interpreting the provision so as to encompass the first example above. If a person becomes a member of a system to which he formerly belonged and redeposits the contributions which he formerly withdrew, he may then transfer to the other system upon gaining employment covered by that system and transfer all credits held under the system from which he is transferring. In this case, there would be no withdrawal from the former system and redeposit in the new system but merely a transfer from one system to the other without any necessity for a refund to the person.

In a case such as above, then, a person who had formerly withdrawn from a system could secure employment for a brief period in a position covered by that system and make the redeposit. It is not difficult to imagine that an interpretation which would limit the application of section 68-1317, R.C.M. 1947, to the situation described above, would lead to inequities in its application. Should a person wish to redeposit withdrawn contributions in a system from which he has withdrawn them and immediately transfer them to the other system he would be forced in many instances to rely on personal influence to

secure employment in a position which would allow such redeposit. By relying on the auspices of a friend in a position to hire him in a capacity which would allow him to redeposit in the appropriate fund he would have a distinct advantage over a person who could not obtain such temporary employment to comply with such an interpretation of the law.

Further, to hold that a redeposit can only be made to the former fund and then transferred would be to demand a useless act of the person seeking to redeposit in a fund other than the one from which he withdrew his contributions. The Montana Supreme Court has held that such a construction is to be avoided where possible. In **State ex rel. Ronish v. School District No. 1 of Fergus County**, 136 Mont. 453, the court said at page 460:

“It would be very easy to cite examples of absurd results if such a literal interpretation were made. Statutory or constitutional construction should not lead to absurd results if a reasonable construction will avoid it.”

In the case at hand it would be absurd to require a person expecting to be employed in a position covered by a second system, and wishing to reinstate past credits for service by redepositing withdrawn contributions to the first system, to become a member of the former system in order to redeposit the withdrawn contributions and then proceed to resign his position and transfer the credits to the second system.

In providing for the redeposit of contributions which have been withdrawn, the legislature made no specific provision for such redeposit except that it be made according to law. To accomplish this it should be noted that both systems provide that when a person withdraws and then redeposits his contributions he is to pay interest at the rate which the withdrawn contributions would have accumulated over the years for which they were withdrawn. Such a provision can be readily applied to any situation which may arise regarding redeposits.

THEREFORE, IT IS MY OPINION that a former teacher who, at the time of his employment as a teacher, was a member of the Teachers' Retirement System and who subsequently enters service in a position covered by the Public Employees' Retirement System, may redeposit any contributions withdrawn from the Teachers' Retirement System, together with interest that such contributions would have accumulated under that system, and receive credit for service as a teacher without

first becoming a member of the Teachers' Retirement System for the purpose of such redeposit.

Very truly yours,

ROBERT L. WOODAHL
Attorney General