

VOLUME NO. 37

OPINION NO. 157

TEACHERS' RETIREMENT SYSTEM - Retirement credit, dependent upon when applicant joined the system; TEACHERS - Out-of-state, private and public; REVISED CODES OF MONTANA, 1947 - Sections 75-2705(9), 75-6209 and 75-6213.

- HELD: 1. Applicants entering the Teachers' Retirement System prior to July 1, 1971, may purchase credit for any type of instructional service previously performed, whether within or without the United States, and whether in a public, private, or federal institution.
2. Applicants entering the Teachers' Retirement System after July 1, 1971, may purchase credit only for certified teaching or administrative functions performed within the United States, its territories or possessions, in state or locally financed public schools and institutions.

7 September 1978

Owen L. Morris, Jr.
Teachers' Retirement System
1500 Sixth Avenue
Helena, Montana 59601

Dear Mr. Morris:

You have requested my opinion concerning the purchase of retirement credits for out-of-state or out-of-country teaching service in private or federally sponsored schools and institutions.

The answer to your inquiry concerning the ability of various applicants to purchase retirement credit in the Teachers' Retirement System for teaching services performed outside Montana or outside the United States depends upon the date upon which the individual applicants joined the System and the controlling statutory provisions at that time. State ex rel. Sullivan v. State of Montana, 34 St. Rptr. 1328, 1329-30 (Nov. 15, 1977). Therefore, the following analysis is fashioned to provide general guidelines for assessing the validity of claims for retirement credit rather than to address the specific requests submitted.

Teaching services performed prior to 1937 by public school teachers are considered "creditable" under a prior service certificate only if performed in public, i.e., state or locally financed institutions, and only if performed in another state or a territory or possession of the United States. "Prior service" was defined in former section 75-2701(7), R.C.M. 1947, in terms of work as a "teacher," which in turn was defined in subsection (4) of that statute with exclusive reference to public elementary and high schools and universities. Furthermore, former section 75-2705(1) provided that an application for membership in the Teachers' Retirement System was to include teaching services performed "in other states," thus indicating that teaching outside the United States was not to be considered in determining creditable prior service. See 17 OP. ATT'Y GEN. 235 (Op. No. 195, Nov. 18, 1937). Section 75-6213, which has been in effect since July 1, 1971, continues the same guidelines as former section 75-2701(7) for services performed prior to September 1, 1937. See sections 75-6201(7) and 75-6209.

The 1949 amendments to section 75-2705, which added subsection (9), allowed out-of-state teachers entering the state public school system to purchase retirement credit for

their services elsewhere for the first time, and was made applicable to "any teacher who has become employed as a teacher in Montana" subsequent to September 1, 1937, for his or her out-of-state teaching employment. According to the interpretation given to the statutory subsection by the Montana Supreme Court, a teacher qualifying under the statute for retirement credit for previous teaching experience was anyone who had taught or instructed, State ex rel. Sullivan v. State of Montana, 34 St. Rptr. at 1331, thereby encompassing any type of former teaching activity, whether in public, private, or federal institutions or schools. Section 75-2705(9) also contained the phrase "out-of-state teaching employment" to express the range of locations and positions for which credit would be allowed. Given the plain meaning of this phrase and the broad reading given to the word "teacher" in the same subsection by the Supreme Court, it follows that the "out-of-state" terminology included any area outside the borders of Montana, including other states, United States territories and possessions, and foreign countries. Cf. Maryland Casualty Co. v. Brown, 115 S.W.2d 394, 395 (Tex. 1938) (in which the Texas Court interpreted similar wording in a Workmen's Compensation statute to include any place outside Texas). As stated in Dunphy v. Anaconda Co., 151 Mont. 76, 80, 438 P.2d 660, 662 (1968), "Where the language of a statute is plain, unambiguous, direct and certain, the statute speaks for itself and there is nothing left for the court to construe." Thus, for those who entered the Teachers' Retirement System between September 1, 1937, and July 1, 1971, any type of former teaching experience in any part of the world qualifies for credit in the System, as long as the other conditions imposed by former section 75-2705(9) are met by the applicant.

The law concerning out-of-state creditable service was amended in 1971, its scope being narrowed once more to include only prior teaching in public elementary and secondary schools and universities in other states. Section 75-6213, R.C.M. 1947, specifically applies only to "out-of-state employment service that would have been acceptable under the provisions of this Title if such service were performed in the State of Montana." Those services which render a person eligible for membership in the System in Montana are listed in section 75-6209 and include only teaching and administrative duties for which one has received certification and which are performed in state and district funded schools and institutions. See section 75-6101, R.C.M. 1947. Therefore, reading together the section referring to eligibility for membership in the System and the section covering creditable out-of-state

service, it is clear that the Legislature intended to exclude previous teaching services performed outside the United States and those performed in private or federal schools or institutions.

THEREFORE, IT IS MY OPINION:

1. Applicants entering the Teachers' Retirement System prior to July 1, 1971, may purchase credit for any type of instructional service previously performed, whether within or without the United States, and whether in a public, private or federal institution.
2. Applicants entering the Teachers' Retirement System after July 1, 1971, may purchase credit only for certified teaching or administrative functions performed within the United States, its territories or possessions, in state or locally financed public schools and institutions.

Very truly yours,

MIKE GREELY
Attorney General