

VOLUME NO. 37

OPINION NO. 80

RETIREMENT SYSTEMS - A faculty member of the Montana University System is not prohibited from receiving retirement credit for sabbatical performance; TEACHERS - A faculty member of the Montana University System is not prohibited from receiving retirement credit for sabbatical performance; EDUCATION, HIGHER - A faculty member of the Montana University System is not prohibited from receiving retirement credit for sabbatical performance; REVISED CODES OF MONTANA, 1947 - Section 75-6213.

HELD: Section 76-6213, R.C.M. 1947, does not prohibit a faculty member of the Montana University System from accruing retirement credit for sabbatical performance.

17 October 1977

Dr. Lawrence K. Pettit
Commissioner of Higher Education
Montana University System
33 South Last Chance Gulch
Helena, Montana 59601

Dear Dr. Pettit:

You have requested my opinion on the following question:

Does section 75-6213, R.C.M. 1947 prohibit a faculty member of the Montana University System from accruing retirement credit for sabbatical performance?

Faculty members in the Montana University System are required to become members of the Teachers Retirement System pursuant to section 75-6209, R.C.M. 1947. Both the employer and the member contribute over six percent (6%) of the member's monthly salary to the member's retirement system account. Benefits upon retirement are based upon the member's years of "creditable service."

Sabbatical leave is best defined by the faculty's sabbatical policy enacted by the Board of Regents which provides that the sabbatical program or project will be approved only if it will improve the staff member professionally, or directly or indirectly benefit the institution and the state. Eligibility for a sabbatical is based on the following criteria:

1) service which is primarily teaching or research; 2) academic rank; 3) total length of service in the Montana University System with a minimum of seven years of service; and 4) the type and quality of the proposed program. No sabbatical leave may exceed more than one academic year, and throughout this period the faculty member remains under contract with the Montana University System, and the salary received thereunder may not exceed two-thirds of the academic year contract. Although recipients of sabbatical leaves may avail themselves of fellowships, assistantships, or sources of limited income, they are not permitted to maintain full-time employment for any person while on sabbatical leave and receiving payments from the Montana University System. If the faculty member's sabbatical involves an assignment for which he is to receive compensation, the compensation is received by his university unit, which in turn pays the faculty member.

The question presented arose when a faculty member of the University of Montana was recently informed by the Teacher's Retirement System that a twelve-month period in 1974 and 1975 when the faculty member was on a sabbatical did not constitute creditable service. The administrators of the Teacher's Retirement Service based this decision upon section 75-6213, R.C.M. 1947. All employee contributions withheld during the sabbatical period were refunded, and the employer contributions were removed from the faculty member's retirement account.

Section 75-6213, R.C.M. 1947, concerns the application for and the purchase of creditable service for out-of-state employment, employment while on leave, and service in the armed forces. Subsection (1) addresses employment while on leave as follows:

Any person applying for membership also may apply for creditable service in the retirement system for employment while on leave. The person shall be awarded creditable service, conditional upon his having been a member prior to his leave and upon completing five (5) years of active membership in Montana subsequent to his return, provided his employment while on leave enhanced his teaching experience as determined by the Board. The person shall be awarded creditable service as determined by the Board but for not more than two (2) years, if he contributes to the retirement system an amount equal to the combined employer

and employee contributions for his first full year's teaching salary earned in Montana after his return from leave for each year of creditable service plus interest at the rate the contribution would have earned had the contribution been in his account upon completion of five years of membership service in Montana. The contribution rate shall be that rate in effect at the time he is eligible for such service. The contribution may be a lump sum payment or in installments as agreed between the person and the retirement board.

This statute cannot be applied merely on the basis that the word "leave" is used at times to define a sabbatical assignment. The determinative factor is the substance of the sabbatical policy. If section 75-6213, R.C.M. 1947, applied to all leaves when the member is in an active employment relationship with an "employer," as defined by section 75-6201(3), R.C.M. 1947, then the member would have to purchase credit for periods of sick leave and vacation leave. This would be an absurd requirement.

The language of section 75-6213, R.C.M. 1947 contemplates a termination of membership as shown by the first sentence which states "Any person applying for membership..." (Emphasis added.) However, this is not the case with a faculty member on sabbatical assignment. To earn sabbaticals, faculty members must be employed by the University unit for at least seven years, during which time they are required to be members of the Teacher's Retirement System. The faculty member retains active membership status in the Teacher's Retirement System during the sabbatical. The faculty member continues to be employed by the University unit and has not withdrawn his accumulated contributions to the Retirement System. Therefore, his membership has not terminated as defined by section 75-6211, R.C.M. 1947, and there is no necessity for his "applying for membership" under section 75-6213, R.C.M. 1947. Neither does a sabbatical leave result in inactive membership as defined by section 75-6210, R.C.M. 1947. Consequently, a sabbatical assignment is simply a continuation of employment with the University System, and a faculty member continues to be an active member of the Teacher's Retirement System as defined by section 75-6209, R.C.M. 1947.

Section 75-6213, R.C.M. 1947 grants to the Retirement Board the power to determine creditable service. However, section 75-6205, R.C.M. 1947, which defines the powers and duties of the Retirement Board, states under subsection (14)(a):

One year's creditable service shall be awarded for each year of full-time service, outside of vacation periods, but no more than one year's creditable service shall be awarded for service during the same school fiscal year. (Emphasis added.)

"Service" is defined by section 75-6201, R.C.M. 1947, as the performance of such instructional duties or related activities as would entitle the person to active membership in the Retirement System under the provisions of section 75-6209, R.C.M. 1947. A sabbatical assignment as previously defined is a "related activity" that entitles a faculty member to active membership in the Retirement System under the provisions of section 75-6209, R.C.M. 1947.

Furthermore, member contributions are deducted from the faculty member's compensation and employer contributions are collected during the period of sabbatical assignment, as evidenced by the factual situation in which this dispute arose. Not only does this make any application of the purchase requirement of section 75-6213(1), R.C.M. 1947, illogical, but section 75-6212(1), R.C.M. 1947 also states in part:

The creditable service of any member shall include the following:

(1) each year of service of a member for which contributions to the retirement system were deducted from his compensation under...this act.... (Emphasis added.)

In light of the substance of the sabbatical policy, the retirement board is statutorily preempted from denying credit for service performed during sabbatical assignment.

THEREFORE, IT IS MY OPINION:

Section 75-6213, R.C.M. 1947, does not prohibit a faculty member from accruing creditable service and receiving the employer contribution for retirement benefits during the performance of a sabbatical program.

Very truly yours,

MIKE GREELY
Attorney General