

VOLUME NO. 38

OPINION NO. 53

RETIREMENT SYSTEMS - Teachers, sabbatical leave as creditable service;

SCHOOL DISTRICTS - Sabbatical leave for teachers, retirement credit;

TEACHERS - Sabbatical leave as creditable service under retirement system;

TEACHERS' RETIREMENT BOARD - Sabbatical leave as creditable service;

MONTANA CODE ANNOTATED - Sections 19-4-101(8), (11), (20), 19-4-204(2), 19-4-302(1)(a), 19-4-302(2), 19-4-304, 19-4-401(1), 19-4-401(2)(a), 19-4-403, 19-4-602(1), 19-4-605(1), 19-4-804, 19-4-902, 20-1-101(20);

OPINIONS OF THE ATTORNEY GENERAL - 37 Op. Att'y Gen. No. 80 (1977).

- HELD: 1. The Teachers' Retirement Board may award a public school teacher up to one month's creditable service for one or more continuous months of sabbatical leave without pay, if the board adopts such a policy.
2. The Teachers' Retirement Board must award a public school teacher creditable service for sabbatical leave with pay.

3. When a school district grants a public school teacher sabbatical leave with pay, the district must: (a) deduct from the teacher's compensation 6.187 percent of the full compensation actually paid the teacher for the employee's contribution, and (b) contribute 6.312 percent of the full compensation actually paid the teacher for the employer's contribution.

5 November 1979

F. Robert Johnson
Executive Secretary
Teachers' Retirement System
1500 Sixth Avenue
Helena, Montana 59601

Dear Mr. Johnson:

Your predecessor asked for my opinion on the following questions:

Should a public school teacher be given retirement credit for sabbatical leave? If so, what contributions should be paid to the retirement system?

Public school teachers in Montana are required to become members of the Teachers' Retirement System under section 19-4-302(1)(a), MCA. Both the employer and the member contribute to funds that are part of the system. See §§ 19-4-602(1) and 19-4-605(1), MCA. Benefits upon retirement are based on the member's "average final compensation" and the number of years of "creditable service." See §§ 19-4-804 and 19-4-902, MCA. Your questions turn on whether a teacher's activity while on sabbatical leave constitutes "creditable service."

"Creditable service" is defined in section 19-4-401(2)(a), MCA, as follows:

The creditable service of a member includes the following: ...each year of service for which contributions to the retirement system were deducted from his compensation....

Under this provision, there are three basic requirements for retirement credit: (1) membership, (2) service, and (3) compensation.

A teacher who is granted a sabbatical leave retains active membership status in the Teachers' Retirement System. See 37 Op. Att'y Gen. No. 80 at 3 (1977); §§ 19-4-101(11); 19-4-302(1)(a), (2); 20-1-101(20), MCA. A sabbatical leave is generally granted for the express purpose of allowing a teacher to engage in some activity that will improve him or her professionally. Such activity, since it is related to the performance of instructional duties, constitutes "service." See 37 Op. Att'y Gen. No. 80 at 3 (1977); §§ 19-4-101(20); 19-4-302(1)(a), (2), MCA.

The final requirement, compensation, apparently is met in some situations but not in others. Your predecessor stated in his letter:

There is no statewide policy governing salary paid a public school teacher while on sabbatical leave. Some school districts grant sabbatical leave without pay, while others may pay a stated dollar amount, the difference between the teacher's contract salary and the salary paid the substitute, one-fourth of contract salary, or one-half of the contract salary, which appears to be the maximum salary paid by any school district while a teacher is on sabbatical leave.

Where the school district does not compensate the teacher, the third requirement for creditable service is not met. A sabbatical leave without pay does not constitute "creditable service" under section 19-4-401(2)(a), MCA. However, subsection (1) states that "creditable service...accumulates to the member's credit on the basis of the retirement board's policy governing creditable service." Section 19-4-204(2), MCA, states:

It is the duty of the retirement board to adopt policies for the determination of creditable service in the retirement system implementing the following guidelines: ...Not more than 1 month's creditable service shall be awarded for 1 or more continuous months of absence without pay.

My review of the rules of the Teachers' Retirement Board, ARM 2-3.38(1)-03800 through S38130 reveals no policy for awarding or denying creditable service for absence without pay under this guideline. Once the board adopts such a policy, it should be applied uniformly to all teachers on sabbatical leave without pay.

A sabbatical leave with pay does constitute "creditable service" under section 19-4-401(2)(a), MCA. Contributions are to be made in the usual manner. Section 19-4-602(1), MCA, states:

Contributions to...the annuity savings fund shall be made in the following manner: ...Each employer shall deduct from the compensation of each active member on the payroll for each payroll period on and subsequent to the date on which the member became a member an amount equal to 6.187% of the member's earned compensation.

Section 19-4-605(1), MCA, states:

Contributions to ... the pension accumulation fund shall be made as follows: ... Each employer shall pay into the pension accumulation fund an amount equal to 6.312% of the earned compensation of each member employed during the whole or part of the preceding payroll period.

"'Earned compensation' means the full compensation, pay, or salary actually paid to a member and reported to the retirement system...." § 19-4-101(8), MCA (emphasis added).

Of course, any teacher who wishes to engage in some employment that does not require membership in the Teachers' Retirement System but that enhances his or her teaching experience may terminate his or her contract with the school district rather than request sabbatical leave. If the teacher then terminates membership in the Teachers' Retirement System under section 19-4-304, MCA, and at some later date returns to employment as a Montana public school teacher, he or she may apply for creditable service for the employment while "on leave" under section 19-4-403, MCA. That provision applies only to former members of the system who are reapplying for membership, not to teachers who have retained membership in the system during a sabbatical leave.

THEREFORE, IT IS MY OPINION:

1. The Teachers' Retirement Board may award a public school teacher up to one month's creditable service for one or more continuous months of sabbatical leave without pay, if the board adopts such a policy.
2. The Teachers' Retirement Board must award a public school teacher creditable service for sabbatical leave with pay.
3. When a school district grants a public school teacher sabbatical leave with pay, the district must: (a) deduct from the teacher's compensation 6.187 percent of the full compensation actually paid the teacher for the employee's contribution, and (b) contribute 6.312 percent of the full compensation actually paid the teacher for the employer's contribution.

Very truly yours,

MIKE GREELY
Attorney General