

January 7, 1950

Melvin Shelley,  
Deputy County Attorney, Navajo County  
Holbrook, Arizona

Dear Mel:

In regard to your telephone conversation with us the other day concerning Navajo County participation in the Public Employees' Retirement Fund of Arizona, we have contacted the members of the Board of Trustees of the Fund and have learned that they have received no notification of any kind from the Board of Supervisors of Navajo County concerning the county's participation. It further appears that the Board has had no correspondence whatever with either the governing body or other officers of the County relative to the Fund.

We wish to call your attention to the language of Section 22 (Section 12-822 ACA 1939, as added by initiative measure, 1948), wherein the elements governing municipality (county, city, town or school corporation) participation in the Fund are specifically set out. We quote a portion of the section:

"A copy of any such ordinance or resolution, duly certified, electing to join the fund and to make the required contributions thereto under the provisions of this act, shall be filed with the board of trustees of the Public Employees' Retirement Fund of Arizona. Such ordinance or resolution shall designate by departmental, divisional, occupational or other definable classification, the employees who are to become members of the fund. Membership in the fund of any municipality or any group of employees thereof shall be subject to the acceptance and approval of the board of trustees of the Public Employees' Retirement Fund of Arizona. The effective date of participation of any municipality as to the original group of employees designated, or as to any additional group of employees subsequently covered, shall be January 1 of the year after the year of approval of membership of any such group of employees by the board. All persons within the group of employees designated by the municipality for membership in the fund, as

approved by the board, shall be required to become members of the fund subject to the conditions as to membership imposed by the provisions of this act, shall be entitled to participate in the benefits prescribed by the provisions of this act, and shall make the necessary contributions in accordance with the provisions hereof". (Emphasis supplied)

The emphasized language above clearly indicates that until the Board of Trustees has approved the membership of any municipality, county in this case, such municipality does not become a participant in the Fund, and further, no municipality actually begins to participate even after approval until the following January 1. The mere enactment by the governing body of a municipality (board of supervisors in the case of a county) of an ordinance or resolution to become a participant does not bring such municipality into the Fund, and under the language of Section 22, such an ordinance or resolution constitutes only a preliminary step in future participation. The acceptance and approval of the Board of Trustees of the Fund is the determining factor.

It follows, of course, that until the municipality has become a participant in compliance with Section 22, none of the provisions of the act concerning the Retirement Fund's operation can be made applicable to a municipality. Section 23 concerning member contributions is only applicable to employees who are members of the Fund. No municipal employees are subject to this provision until their municipality has become a participant and the effective date of such participation has arrived.

For your information we are enclosing a copy of an opinion dated November 15, 1949, from this office to the County Attorney of Gila County regarding its possible participation in the Fund. The reason behind the opinion, i.e., the wisdom of county participation as of January 1, 1950, would not now seem applicable to Navajo County, that date having passed. It seems rather obvious that Navajo County cannot become a participant in the Fund prior to January 1, 1951, and then only through the compliance with the provisions of Section 22.

As we are not entirely familiar with the circumstances surrounding Navajo County's actions in regard to the Retirement Fund, our letter may not give you the exact information that you are seeking. We will be very glad to

Melvin Shelley  
Deputy County Attorney, Navajo County

Page 3  
Jan. 7, 1950

give you all the help that we can in regard to your County's future participation. Please feel free to contact us at any time.

We would like very much to have the facts concerning your situation, especially as to any action which may have been taken by the County Board of Supervisors. With such information, we will be enabled to more adequately aid you.

We hope that we have been of some help to you, and with best personal regards, Mel, from the writer, we are,

Sincerely yours,

FRED O. WILSON  
Attorney General

RICHARD C. BRINEY  
Assistant Attorney General

**LAW LIBRARY**  
**ARIZONA ATTORNEY GENERAL**

RCB:f  
enc.