

Sept. 27, 1946

Wayne R. Gibson, Executive Secretary,
Arizona Teachers' Retirement System,
405 Johns Tower,
Phoenix, Arizona

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ARIZONA ATTORNEY GENERAL

Dear Mr. Gibson:

In your letter of May 14, 1946, you request our opinion as to the eligibility for prior credit service under the Teachers' Retirement Act of 1943, of Mr. Bert H. Belluzzi and Mr. Lorenzo K. Lisonbee.

The facts concerning Mr. Belluzzi's application are that he was employed as a teacher for the year 1942-43, then called to the armed air forces mechanic school in June 1942, serving there until May 1943, and entered the armed forces in July of 1943. Mr. Lisonbee, employed as a teacher at Coolidge until 1942, was a civilian instructor in the army air forces technical school 1942-1943, and then entered the maritime service in 1944.

The law covering eligibility for prior service credit is, as you indicated, set out in Section 54-1705, paragraph (d), as follows:

"Any person who was an employee immediately prior to military service in the armed forces of the United States in the present national emergency, may file a valid statement of prior service following military discharge if within one (1) year after discharge from such military service he becomes a member".

The question, of course, is whether either person was in the military service in the armed forces of the United States immediately subsequent to his employment as an Arizona teacher.

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Although neither was in the "military service" in the common understanding of the phrase, it is the opinion of this office that the phrase was not intended to have a restricted meaning. There is no precise meaning of "military service" in the cases involving a construction of those words. See Words and Phrases, Vol. 27, p. 131. And when such construction is vague, we must determine what the reasonable intention of the legislature was in providing for this prior service credit. If two constructions are possible, a narrow one and a broad one, that construction should be adopted which will best carry out the best purposes of the legislature and be in harmony with the general public policy of state. - *Giets v. Webster*, 50 P. 2d 573; 46 Ariz. 261. It is reasonably apparent that the legislature intended to protect all teachers who felt it their duty to serve their country, whether in a fighting role, or in one more remotely, yet substantially, connected with our war effort.

Besides, such a broad interpretation of the meaning of "military service" is not unknown to the law. It was held in *Lynn v. Schneck* 30 P. 2d 117 (Kans.) that a person working in a government powder plant was in military service; and the United States Supreme Court held that a civilian chaplain attached to a military post and subsequently commissioned was regarded as "in service" during the period prior to his commissioning for the purpose of longevity pay. -- *United States v. LaFourette*, 151 U. S. 572. Certainly, therefore, instructors in army air forces technical schools may be regarded as "in service".

In the opinion of this office, both Mr. Belluzzi and Mr. Lisonbee were "in military service" immediately subsequent to their employment as Arizona teachers, so as to qualify them for prior service created under Section 54-1705, A.C.A. 1939. We add that our opinion is not to be construed as a broadening of the section except as to cases similar to these in question.

Very truly yours,

JOHN L. SULLIVAN
Attorney General

WILLIAM P. MAHONEY, JR.,
Assistant Attorney General