

October 23, 1950
Op. No. 50-235

Mr. Frank M. Clark, Jr.
Chief Clerk
Arizona State Industrial School
Fort Grant, Arizona

LAW LIBRARY
ARIZONA ATTORNEY GENERAL

Dear Mr. Clark:

We have your letter of October 10, 1950 wherein you pose the following question:

"Will you please give us a ruling as soon as possible on the following situation? On February 28, 1950, an employee who had been employed at the Industrial School for more than a year resigned. He had been paying into the Arizona Public Employees Retirement Fund from the effective date until his resignation.

He has now returned to be employed at the school and we are wondering if he must have six months of uninterrupted service before he pays into the fund again, or may we take that deduction from his earnings beginning with the date of his employment?"

This opinion is predicated upon the premises that the employee in question was entitled to a refund of his accumulated contributions upon his withdrawal from service under the provisions of Section 15 of the Public Employees' Retirement Act of 1948 (Secs. 12-801 through 12-828 ACA 1939, as added by Initiative Measure, 1948), and that his resignation was a "withdrawal from service" as defined in Section 4 of said Act, i.e., a complete severance of employment as an employee. We are further presuming that said employee did not receive a refund of his accumulated contributions to the Fund upon his withdrawal from service.

Upon the foregoing facts and presumptions, it is our opinion that the employee in question, upon return to service, is a new employee under the provisions of Section 5 (b) of the Act, and that the provisions of said sub-section are applicable to him. Sub-section (b) provides:

"Any person who becomes an employee on or after the effective date shall, upon completion of six months of continuous service uninterrupted by a break of more than one month, become a member of the fund as a condition of employment; provided said

person is under the age of sixty years at the time of completion of said six months of service. Contributions by such employee under this act shall begin with the first pay roll period after said six months of service shall have been completed, and creditable service shall then begin to accrue. Any such employee may elect to make contributions for the said six months of service prior to membership in the fund under rules established by the board and thus receive credit for such service."
(Emphasis supplied)

Although a member receiving a refund of contributions forfeits all accrued rights in the fund including all accrued creditable service (subject to restoration in accordance with Section 15), it is clearly intended by the Act that one who does not choose to receive back his accumulated contributions as a refund will not forfeit such rights.

Specifically answering your question, the employee in question (if he meets all of the conditions in Section 5 (b)) may elect to make contributions from the beginning date of his new employment (such contributions appearing to be clearly to his advantage, he thereby receiving credit for such six-months service). Contributions for said six-months period are not mandatory, however, and become compulsory only after said six-months service shall have been completed. In such event, creditable service only then begins to accrue.

Very truly yours,

FRED O. WILSON
Attorney General

RICHARD C. BRINEY
Assistant Attorney General

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