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July 24, 1951  
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Mr. E. J. Oakwood  
Purchasing Agent  
Arizona State Prison  
P. O. Box B  
Florence, Arizona

Dear Mr. Oakwood:

We have your letter of July 18, 1951, wherein you present the following matter for our opinion:

"On June 15, 1951 Mr. Alvin Tredemeyer resigned his position here at the Arizona State Prison. After receiving his last paycheck he made application for refund of amount withheld for the Public Employees Retirement Fund.

On July 16, 1951 he accepted a position with the Institute of Educational Rehabilitation and desires to have no retirement withheld from his wages.

It is my opinion that since this retirement act has not actually been put into effect that certain rules governing the act are void and that Mr. Tredemeyer is within his rights in requesting that no deduction be made from his wages after returning to work for the state."

The law concerning the Public Employees' Retirement Fund of Arizona is now contained in ACA 1939 supplement as Sections 12-801 through 12-828. Among the provisions of the Act are those contained in Section 12-805 (b) which reads:

"Any person who becomes an employee on or after the effective date shall, upon completion of six (6) 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 (6) months of service prior to membership in the fund under rules established by the board and thus receive credit for such service."

If Mr. Tredemeyer in fact withdrew from service in the state (i.e., accomplished a "complete severance of employment \* \* \* by resignation, discharge, or dismissal") his subsequent reemployment by the state made him a new employee within the meaning of Section 12-805 (b), supra. His membership in the Fund and salary deductions (and see Section 12-823) become compulsory upon completion of six months continuous service uninterrupted by a break of more than one month, if he is at that time under the age of sixty. It is our opinion that this section of the Act is operative and mandatory and the statutory deductions must be made after said six months. The question has been settled by the Arizona Supreme Court in Dennis v. Jordan, 71 Ariz. 430, 229 P. 2d 692. Deductions for the said six months period are voluntary.

If Mr. Tredemeyer had not withdrawn from service and had continued in employment, it is clear that the Act continued to apply to him and that deductions were mandatory as to each pay roll period while employed, membership in the Fund in such case having been continuous.

Very truly yours,

FRED O. WILSON  
Attorney General

RICHARD C. BRINEY  
Assistant Attorney General

RCB:f

cc: Board of Trustees  
Public Employees' Retirement Fund