

December 3, 1948

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

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ARIZONA ATTORNEY GENERAL

Dear Mr. Gibson:

We have your letter of November 2d in reference to Miss Frances E. Goodin of Tucson as to her status under the Teachers' Retirement System.

It appears from your letter that Miss Goodin has completed in excess of thirty years public school employment prior to the time her services were terminated in May, 1938, and that she was over the age of sixty at the time of such termination, but she did not make application for a service retirement to be allowed teachers pensioned under Section 54-1008, A.C.A. 1939, when her services were terminated. It further appears that she declined to claim the benefits of said Section 54-1008.

You then ask our opinion on the following questions:

1. Does Miss Goodin have 'vested right' to the service retirement allowance accrued under Section 54-1008, Arizona Code of 1939, which will enable deferred approval of her retirement request? May the Board of Trustees of this system approve a retirement allowance developed from an employment record concluded before Section 54-1008, Arizona Code of 1939, was repealed by Article 17, Teachers' Retirement Act of 1943?
2. Since Miss Goodin was not employed in Arizona public schools during 1942-43 and did not become a member of this system before January 1, 1947, the provisions of Section 54-1705 of the present retirement act seemingly deny our opportunity of issuing Miss Goodin a Prior Service Certificate. Might it be held, however, that her established retirement eligibility under the former law, in

effect, supercedes the 'in service' requirements of the present Act, thereby enabling belated approval of her membership in this System, to be immediately followed by approval of her retirement request?"

Answering the first portion of your question number one, it is our opinion that Miss Goodin does not have a "vested right" in the pension provided for in Section 54-1008, unless she accepted the same prior to the repeal of said section in 1943. The pension provided for in said Section 54-1008 was granted out of State funds by an act of the Legislature and the same body that made the grant had a right to take it away. The authorities are unanimous in holding that where a pension is granted out of public funds without any contributions upon the part of their prospective recipients, that no vested right is acquired.

As to the remaining portions of your two questions, Section 2, Chapter 61, Laws of 1943 (Teachers' Retirement Act) a teacher is defined as:

"any person holding an active teachers' certificate and engaged in instructional work, directly as classroom, laboratory, or other teacher, or indirectly as supervisory teacher, principal, superintendent, or administrative officer in any * * *" (Emphasis Supplied)

An "Employee" is defined:

"any teacher employed on an annual or monthly salary basis;" (Emphasis Supplied)

Section 4 of the same Act provides, in part, as follows:

"(b) Any person who is an employee as of the effective date of this act shall become a member of the retirement system as of July 1, 1943, un-

less, prior to July 1, 1943, he files with the board of trustees, on a form prescribed by it: 1. notice of election not to be covered into the membership of the system, and, 2. a waiver of all present and prospective benefits which would otherwise inure to him under this act. An employee who elects not to become a member may thereafter be admitted to membership, but in order to receive prior service credit shall become a member within one (1) year after the establishment of the retirement system.

(c) In the event any member in any period of six (6) consecutive years after last becoming a member, is absent from service for more than five (5) years, except in compulsory military service or in the military service of the United States in time of war, withdraws his accumulated contributions, or becomes a beneficiary or dies, he shall cease to be a member."

Section 5 of said Act provides for membership of persons entitled to prior service credit:

"(a) Each member who was an employee in this state, at any time prior to the establishment of retirement system, and who became a member before January 1, 1947, shall file a statement of prior service, setting forth in detail all service rendered by him within the state for which he claims credit, and as a teacher without the state. Any member who was not an employee at any time during the year immediately preceding the establishment of the retirement system and who be-

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came a member before January 1, 1947, shall file a statement of prior service within the state only. Subject to the restrictions contained in subsection (b), the board shall verify the service claimed as soon as practicable after the statement is filed."

You will note that any member who was not an employee or teacher at any time during the year immediately preceding the time the retirement system became effective had until January 1, 1947 to qualify under the Act and become a member. It appears from your letter that Miss Goodin did not qualify for membership within the time prescribed by the Act.

We have tried to find something in the Retirement Act whereby Miss Goodin could come under the provisions of the Act but have been unable to do so.

Therefore, it is our opinion Miss Goodin is not eligible to membership in the Retirement System and that you would have no right to enroll her as a member.

Very truly yours,

EVO De CONCINI
Attorney General

EARL ANDERSON
Assistant Attorney General

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