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ARIZONA ATTORNEY GENERAL

September 26, 1949

Harry W. Hill, Commissioner
Arizona State Department of
Public Welfare
39 North Sixth Avenue
Phoenix, Arizona

Dear Mr. Hill:

We acknowledge receipt of your letter of September 14, 1949, wherein you present the following problem:

"We have two employees on educational leaves who are receiving assistance from this department during this leave. They have requested that we make the deduction for the retirement fund of 5% in each case. Will you please advise whether or not in your opinion we can make a deduction and retain their standing under the retirement reserve while away at school?"

Section 6 (b) of the Public Employees' Retirement Act of 1948 provides in part:

"After the effective date, all service of a member since he last became a member with respect to which contributions are made, shall count as membership service, provided that twelve months of service shall constitute a year of membership service, and that the completion of fifteen days of service or more during any month shall entitle a member to credit for one month of membership service.

Any member of the fund shall be entitled to credit for prior service or membership service, as the case may be, for any continuous period of leave of absence granted under rules in force,

not exceeding six months during any one consecutive period of four fiscal years, and any member may elect to make contributions to the fund for such period of leave of absence if occurring after the effective date based upon the rate of compensation in force on the date of commencement of such leave.

The board shall establish rules to govern the determination of service in cases not specifically provided for herein."

Section 23 of the Act contains this language:

"Beginning on the effective date, each employee who is a member of the system shall contribute five per cent of compensation earned and accruing on and after said date. This contribution shall be made in the form of a deduction from compensation * * * "

Section 4 defines "compensation" as follows:

"* * * the salary or wages payable on a regular pay roll out of funds controlled by the employer, * * * "

If the time spent by the employees in question while on educational leave is "service" within the meaning of the above-quoted language of Section 6 (b) and, if the assistance they receive from the Department during this period is "compensation", within the meaning of Section 23 and the definition in Section 4, these persons are entitled to receive full membership credit for such time and deductions should be made from such assistance.

The facts surrounding the present problem show that both the State Department of Public Welfare and the cooperating Federal agency recognize the importance and value to the Department of having employees thereof receive, at educational institutions, specialized courses in child welfare training and other associated fields within the scope of the Department's work. It is our understanding that these educational leaves do not extend beyond a period

of one school year. The individuals receiving such schooling are, at all times, considered employees of the Department and as in its service. In each case the Department retains the right to revoke such leaves and the employees concerned are subject to recall. The selection of the individuals, their acceptance being on a purely voluntary basis, is made by the Board upon recommendation of the Department. Each employee so chosen for this educational training agrees to continue to work with the Department for at least one year subsequent to the termination of the schooling. In return for the work performed at the educational institutions by these employees and the resultant value thereof to the Department, the Department financially "assists" these persons while at school, such assistance being on a similar and comparable basis with the regular compensation of regular Department employees.

The Public Employees' Retirement Act of 1948 does not define "service" as used in Section 6 and elsewhere in the Act and the word generally may, depending upon its usage, have varying shades of meaning. In Cresmeries of America v. Industrial Commission, 98 Utah 571, 102 P. 2d 300, the following language is used:

"In ordinary usage the term 'services' has a rather broad and general meaning. It includes generally any act performed for the benefit of another under some arrangement or agreement whereby such act was to have been performed. The general definition of 'service' as given in Webster's New International Dictionary is 'performance of labor for the benefit of another'; 'Act or instance of helping or benefiting'.
* * *"

In absence of language to the contrary we assume that the word "service" was used in the Act in its common and general sense. See Section 1-103 ACA 1939.

The "leave of absence" provision in Section 6(b) is not applicable to the instant situation as it clearly appears to contemplate a temporary period of absence from service for which no compensation is forthcoming. The court in State ex rel. McGaughey v. Grayston, 349 Mo. 700, 163 SW 2d 335, stated that a "leave of absence" ordinarily signifies a temporary absence from duty with the intent to return

during which time remuneration is suspended.

It is therefore our opinion that the employees in question on educational leave for the benefit of the State Department of Public Welfare are, during such time, performing "service" for the Department and are receiving "compensation" therefor, as both those terms are used in the Act. They are entitled to full membership credit for such periods of training, and deductions should be made from their compensation in accordance with the provisions of Section 23.

The matter would further appear to be one possibly subject to rules and regulations of the Board of Trustees of the Public Employees' Retirement Fund. See Section 6(b) supra.

We hope this sufficiently answers your inquiry.

Yours very truly,

FRED O. WILSON
Attorney General

RICHARD C. BRINEY
Assistant Attorney General

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