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April 28, 1953
Opinion No. 53-83

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

RE: Effective date of the repeal of the Supplementary Retirement Act of 1952, paragraphs 54-1738 through 54-1745.

QUESTION: Does Section 4 of House Bill 195 (Chapter 137, Laws 1953) commit the continued collection of ½ of 1% of University and College employee compensation for credit to the permanent and total disability fund until provisions of House Bill 195 shall become operative in their entirety?

In past years this office has been called upon to determine whether or not teachers at the University and State Colleges were qualified for participation in the Teachers' Retirement System. The question then turned upon the definition of "teacher" as set forth in Section 54-1702 A.C.A. 1939, as amended. The term was there defined as " * * * any person holding an active teachers' certificate * * *".

Dealing specifically with teachers in the Arizona State College at Tempe, an opinion was rendered to the Honorable Lewis R. Burch, State Legislator, on January 29, 1952, which held in substance that such teachers were eligible to participate in the retirement system notwithstanding they were not holders of a teacher's certificate.

The reasoning in the above-mentioned opinion placed great weight upon the interpretation and contemporaneous construction of the statute by the administrators of the Teachers' Retirement Act. The construction placed upon the statutes by its administrators was that its provisions were uniformly applied to teachers at the University and State Colleges. We have since been advised that these particular teachers actually did participate in the Retirement System and also

withdrew therefrom (in accordance with the Supplementary Act of 1952) in order to secure coverage under the Federal Old Age and Survivors' Insurance System.

It is apparent that while these teachers were not holders of active teachers' certificates, they were nevertheless persons who were considered in the same light as those teachers who held active certificates.

The instant question involves the same difficulty, to wit: inasmuch as the majority of the teachers at the University and State Colleges do not hold teachers' certificates, and since the application of Chapter 137, Laws 1953, is apparently restricted to all persons holding active teacher's certificates, are these teachers included within Section 4 of House Bill 195, which sets forth the conditional operative date for the termination of the Arizona Teachers' Retirement System?

It would not abide with reason to hold that such teachers, who have in the past been considered as qualified within the provisions of the Retirement Act, are not now in the same category with relation to the effective date of the termination of the Retirement System.

We are therefore of the opinion that by relying upon the provisions of the Retirement System as well as withdrawing therefrom, so as to accept the benefits provided in the Supplementary Act of 1952, these teachers would now be "estopped" to assert that they no longer occupy the same position as those teachers who in fact hold certificates.

We must, then, answer your inquiry in the affirmative, inasmuch as the teachers in question are, through past interpretation of similar legislation, in the same position as persons who hold active teachers' certificates as contemplated by Chapter 137, Laws 1953.

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