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OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Texas Co,

Honorable Mortimer Brown
Executive Secretary
Teacher Retirement Board
Austin, Texas

Dear Sir:

Opinion No. C-2950
Re: Teacher Retirement --
Person employed in the
educational work of the
National Defense Training
Program.

We received your letter dated December 3, 1940,
requesting our opinion on the following questions:

"1. Is a person employed in the
educational work of the National Defense
Training Program that is now being con-
ducted in Texas under the supervision of
the State Board for Vocational Education
occupied in work of such a nature as to
cause his status as a teacher to be doubt-
ful and consequently subject to a ruling
by the Board of Trustees of the Teacher
Retirement System?"

"2. In case his status is not of a
doubtful nature, is the work of an eligible
nature or ineligible nature?"

We quote from the letter written by Mr. James R.
D. Eddy to you, dated November 30, 1940, as follows:

"The State Board for Vocational Educa-
tion, in cooperation with local school boards,
has been conducting emergency training programs
in cooperation with the U. S. Office of Educa-
tion to meet the needs for national defense
programs. These programs are supported entire-
ly by Federal funds appropriated by Congress
for this purpose. No local or State money is
used.

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"We are now undertaking an expansion of this training program in conformity with the supplementary Act, and new plans as set up by the Office of Education. Under this expanded program, training will be offered under the supervision of the Homemaking Division, Agriculture Division, and Trade and Industrial Division, through local school boards over the entire State. There are three plans for conducting programs under the various Acts. Attached is an informative circular describing these three plans. Also attached are copies of questions and answers as issued by the U. S. Office of Education pertaining to the National Defense Program.

"The problem that is confronting us is whether or not these teachers come within the scope of the State Teacher Retirement Act and are eligible to participate therein. In considering this question, I should like to present the following facts for your information:

"1. In the majority of cases, teachers will be employed by local school boards with the consent and approval of the State Board for Vocational Education.

"2. The local school board will enter into a contract with the State Board for Vocational Education for the payment of funds to cover the actual cost of the instructional program. These funds will be paid upon receipt of sworn affidavits through the issuance of a warrant drawn at the request of the State Board for Vocational Education by the State Treasurer of Texas on a special account set up by the U. S. Office of Education for this purpose. This warrant is issued to the school depository in the usual manner but must be kept by the depository in a separate account.

"3. All teachers are hired on an emergency basis with the anticipated employment period being for eight weeks or more, and not longer than

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until June 30, 1941.

"4. Teachers may be hired by the State Board for Vocational Education on a State-wide itinerate basis and paid salaries out of special funds deposited with the State Treasurer for such purposes.

"5. Teachers are hired both on a part-time and full-time basis. In considering the question of teacher retirement, only full-time teachers can be considered. No question has arisen insofar as part-time teachers are concerned, except as stated below.

"6. Regularly employed school teachers may teach a limited number of hours in the NYA program as set up under Plan 3, and receive therefor additional salary for this part-time work that is done outside and exclusive of their regular teaching duties. In no case can any teacher teach more than a total of 40 hours class work per week.

"Up to the present time, all teachers hired on this program have been employed on a temporary three months basis, which eliminated them from participation. Under the new regulations effective as of this date, teachers may work until June 30, 1941."

Section 1, Subsection 2 of the Teacher Retirement Act (Acts 45th Leg., 1937, Ch. 470, Page 1178) reads as follows:

"(2) 'Public School' shall mean any educational organization supported wholly or partly by the State under the authority and supervision of a legally constituted board or agency having authority and responsibility for any function of public education."

Section 1, Subsection 3 of the said Act reads as follows:

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"(3) 'Teacher' shall mean a person employed on a full-time, regular-salary basis by boards of common school districts, boards of independent school districts, county school boards, Retirement Board of Trustees, State Board of Education and State Department of Education, boards of regents of colleges and universities, and any other legally constituted board or agency of an educational institution or organization supported wholly or partly by the State. In all cases of doubt, the Retirement Board of Trustees, hereinafter defined, shall determine whether a person is a teacher as defined in this Act. A teacher shall mean a person rendering service to organized public education in professional and business administration and supervision and instruction, in public schools as defined in subsection (2) of this section." (Underscoring ours).

Section 1, Subsection 5 of said Act reads as follows:

"(5) 'Employer' shall mean the State of Texas and any of its designated agents or agencies with responsibility and authority for public education, such as the common and independent school boards, the boards of regents of state colleges and universities, the county school boards, or any other agency of and within the State by which a person may be employed for service in public education."

As we understand the facts, the teachers in question are hired by the local school board. The board determines and passes upon the qualifications of said teachers. These teachers are under the control and supervision of the local school board and look to the board for their salaries. We are of the opinion that such facts clearly show that the local school board is the employer of the teachers in question within the meaning of Section 1, Subsection 5 of the Teacher Retirement Act.

Whether or not the persons in question are covered by the Teacher Retirement Act depends upon whether they are "teachers" as that term is defined in Section 1, Subsection

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3 of the Act. This section provides that "Teacher" shall mean a person employed on a full-time, regular salary basis * * *." (Emphasis ours). The facts reveal that the employees in question may teach up to forty (40) hours per week. Courses may be offered at any time during the twenty-four (24) hours of the day. The length of the daily schedule and training period is not fixed, but depends upon the needs of the jobs for which training is given. We are informed that the entire program is somewhat temporary in nature and will expire June 30, 1941, unless otherwise extended.

Subsection 3 of Section 1 of said Act provides further that "A teacher shall mean a person rendering service to organized public education * * * in public schools." (Emphasis ours). It may be that in certain situations this part of Subsection 3 would exclude some of the persons in question from the provision of the Act.

Subsection 3 of Section 1, after defining the word "teacher," provides further that "In all cases of doubt, the Retirement Board of Trustees * * * shall determine whether a person is a teacher as defined in this Act." We are of the opinion that it is doubtful whether these persons engaged in the National Defense Training Program, conducted under the supervision of the State Board for Vocational Education, are "teachers" within the meaning of the Teacher Retirement Act. It follows that this is a matter for the Retirement Board of Trustees to decide. For this reason we do not answer your second question.

Yours very truly

ATTORNEY GENERAL OF TEXAS

APPROVED JAN 2, 1941

By

Glenn R. Lewis

Glenn R. Lewis
Assistant

Gerald C. Mann
ATTORNEY GENERAL OF TEXAS

By

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LS:RS

