



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

Honorable John S. Rudd, Jr., Acting Director
Teacher Retirement System of Texas
Austin, Texas

Dear Sir:

Opinion No. 0-4072

Re: Contributions received by
Teacher Retirement System
after retirement of member.

We have received your letter of October 6, 1941, in which you ask whether the following regulation passed by the Board of Trustees of the Teacher Retirement System is a proper one.

"Contributions received by the Retirement System for the account of a member subsequent to the effective date of such member's retirement shall be returned to such member and shall not be included as part of such member's annuity reserve."

Section 5, Subsection 2 of the Teacher Retirement Law (Article 2922-1, Vernon's Annotated Civil Statutes) reads in part as follows:

"2. Allowance for Service Retirement. Upon retirement for service a member shall receive a service retirement allowance consisting of a membership annuity, which shall be the actuarial equivalent of his membership annuity reserve, and a prior-service annuity to which his creditable service and membership in the Teacher Retirement System entitles him under the provisions of this Act.

"(a) His membership annuity reserve shall be derived from:

"(1) His accumulated contributions credited to his account in the Teacher Saving Fund at the time of retirement; and

"(2) An additional sum from the State Membership Accumulation Fund equal to the accumulated contributions provided by the member in Subsection (1) of Paragraph (a) of this Subsection."

The validity of the regulation necessarily depends upon the meaning of the words "credited to his account in the Teacher Saving Fund at the time of retirement."

If this provision means the actual receipt of the money and its deposit in the fund to the credit of the member, then the regulation is valid. But on the other hand, if the language means the deductions from the member's earnable compensation which is to be placed in the fund, then the regulation is invalid. We are inclined to the latter expressed view.

Some general rules on statutory construction are quoted from Texas Jurisprudence, Volume 39, pages 166, 209, 217, as follows:

"The intention of the Legislature in enacting a law is the law itself,' 'the essence of the law,' and 'the spirit which gives life' to the enactment. Hence, the aim and object of construction is to ascertain and enforce the legislative intent, and not to defeat, nullify or thwart it.

"When the intent is plainly expressed in the language of a statute, it must be given effect without attempting to construe or interpret the law. On the other hand, when it is necessary to construe an act in order to determine its proper meaning, it is settled by a host of decisions that the court should first endeavor to ascertain the legislative intent, from a general view of the whole enactment. Such intent having been ascertained, the court will then seek to construe the statute so as to give effect to the purpose of the Legislature, as to the whole and each material part of the law, even though this may involve a departure from the strict letter of the law as written by the Legislature.

"This is the fundamental canon and the cardinal, primary and paramount rule of construction, which should always be closely observed and to which all other rules must yield. * * *"

* * *

"Another fundamental rule requires that a statute be construed as a whole and that all of its parts be harmonized, if possible, so as to give effect to the entire act according to the evident intention of the Legislature. * * *

"Each part of the statute is to be considered in connection with every other part and with the entire enactment, in order to produce a harmonious whole and to reach the true legislative intent. Thus in case of doubt as to the meaning of a particular word, clause, provision or section, it is to be viewed in the light of all the language employed. It follows that a provision will not be given a meaning out of harmony with other provisions and inconsistent with the purpose of the act, although it would be susceptible of such construction if standing alone."

* * *

* * * Thus it is settled that a statute will be construed with reference to its intended scope, its general purpose, and the ends or objects sought to be attained. Every provision, clause or word of an act will be construed with reference to its leading idea or general purpose, and brought, so far as possible, into harmony therewith."

With these principles in mind we will now consider the language used in Section 5, Subsection 2 of the Act. The main purpose of the Teacher Retirement Law is the protection of teachers after retirement. It is true that the teacher shares part of the burdens of the Act; however, the act is mainly for his benefit, and we believe that doubts should be resolved in his favor.

Subsection 1 of Section 8 of the Act provides for deduction from the salary of the teacher of five per cent of his earnable compensation. Subsection 1(c) of Section 8 provides in part as follows:

" * * * The employer shall certify to the State Board of Trustees on each and every payroll, or in such other manner as said Board may prescribe, the amounts to be deducted; and each of said amounts shall be deducted, and when deducted shall be paid into said Teacher Saving Fund, and shall be credited, to the individual account of the member from whose compensation said deduction was made."

If the regulation under consideration were upheld, then emphasis would be placed on the physical acts of receiving the contributions and depositing the same in the fund to the credit of the teacher. But if the deduction is rightfully made from the compensation of the teacher, should the teacher be penalized if the employer fails or neglects to send it in promptly? We think not. We believe that once the deduction is rightfully made from the salary of the teacher, then it is to his credit in the Teacher Saving Fund even though the teacher is retired before the money is actually received by the Teacher Retirement System. This view places emphasis, not on the physical acts of receipt and deposit of the contributions, but on the spirit behind the law.

It is our opinion, therefore, that the regulation is invalid.

Yours very truly

ATTORNEY GENERAL OF TEXAS

APPROVED
[Handwritten Signature]
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By *[Handwritten Signature]*
George W. Sparks
Assistant

GWS:ej

APPROVED
COMMISSION
COMMITTEE
BY *[Handwritten Signature]*
CHAIRMAN

O.K.
G.P.