



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GROVER SELLERS
ATTORNEY GENERAL

Mrs. B. B. Sapp
Executive Secretary
Teacher Retirement System of Texas
Austin, Texas

Dear Mrs. Sapp:

Opinion No. O-6619

Re: Eligibility of certain members
for Teacher Retirement benefits,
who have been transferred from
one State Department to another.

Whether a teacher who is on a leave
of absence from a school, may be
allowed to make deposits with
the Teacher Retirement System,
and be considered an active
member.

We are in receipt of your opinion request reading
as follows:

"The following problems have been presented
to this office. Will you please give your interpretation
of procedure in these instances:

"1. Certain members of the Teacher Retirement
System worked in the Cripple Children's Division under
the supervision of the Department of Education. Since
the supervision of the Cripple Children's Division has
been transferred from the State Superintendent to the
Department of Health, will the eligibility of these mem-
bers for Teacher Retirement benefits be affected?

"2. May a teacher who is on a leave of absence
from a school, and who receives full pay from said school,
be allowed to make deposits with the Teacher Retirement
System each month and be considered an active member?"

Subsection (2) of Section 1, Article 2922-1, Vernon's Revised Civil Statutes, 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."

Subsection (3) of the same Section is as follows:

"(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 in instruction, in public schools as defined in Subsection (2) of this Section."

Subsection (4) of the same Section is as follows:

"(4) 'Taught' shall mean all regular services contributing directly and indirectly to the instruction offered by and through the teachers as defined in Subsection (3) of this Section."

Subsection (5) of the same Section is 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."

You are advised that, in our opinion, the eligibility of members for Teacher Retirement are not affected by the change in supervision from the Department of Education to the Department of Health. Both departments are agencies of the State, by which persons may be employed for service in public education. Your attention is directed to the following language found in subsection (3), supra: "In all cases of doubt, the Retirement Board of Trustees * * * shall determine whether a person is a teacher as defined in this Act."

Your second question is answered in the negative. No school district is authorized by law to pay a teacher full pay unless the teacher renders some service to the school. A teacher on leave of absence for the entire school year is not rendering service to her employer and should not be allowed to make deposits with the Teachers' Retirement System.

We trust that we have satisfactorily answered your inquiry.

Yours very truly

ATTORNEY GENERAL OF TEXAS

APR JUN 1945
Wm. Allan
ATTORNEY GENERAL OF TEXAS

By *C. F. Gibson*
C. F. Gibson
Assistant

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