



**THE ATTORNEY GENERAL  
OF TEXAS**

AUSTIN 11, TEXAS

PRICE DANIEL  
ATTORNEY GENERAL

January 17, 1947

Mrs. B. B. Sapp  
Director and Executive Secretary  
Teacher Retirement System of Texas  
Austin, Texas                      Opinion No. V-06

Re: Interpretation of Paragraph  
(1), Section 3, Article 2922-1,  
V.A.C.S.; Subdivision c, Sec-  
tion 8 of Article 2922-1, V.A.C.  
S.

Dear Mrs. Sapp:

We are in receipt of your request for our opinion on the hereinabove captioned matter, and we quote from your letter as follows:

"We have some teachers in Texas who have been holding eligible positions since the inception of the Retirement System. They did not know their position was eligible until recent date.

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"I am now confronted with the question, if a person was holding an eligible position in 1937-38 and did not realize that it was eligible, and now the eligibility is being made known to such employee, could such employee be given the right of signing a waiver such as was offered employees in the first 90 days of the 1937-38 school term, or must they comply with House Bill 602? If the answer is that employees must conform to the regulations as prescribed in House Bill 602, would employees who are just now being informed that they hold eligible positions have to make their payments, or deposits, retroactive to August 31, 1943, or could they begin now making deposits and have the status of a beginning teacher?

"The employees in question were holding eligible positions in 1937-38 but have not been informed until recently of the eligibility of their positions."

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Subdivision (1), Section 3, Article 2922-1, reads as follows:

"All persons who are teachers on the date as of which the Retirement System is established shall become members as of that date as a condition of their employment unless within a period of ninety (90) days after September 1, 1937, any such teacher shall file with the State Board of Trustees on a form prescribed by such Board, a notice of his election not to be covered in the membership of the System and a duly executed waiver of all present and prospective benefits which would otherwise inure to him on account of his participation in the Retirement System."

Paragraph (c), Section 8, Article 2922-1, V.A. C.S., (Paragraph (c), Sec. 8, H. B. 602, Acts of the Regular Session, 47th Leg., 1943), reads as follows:

"Any member of the Teacher Retirement System from whose salary prior to August 31, 1943, a deduction or deductions have not been made, but which should have been made, in accordance with the provisions of this Act, may elect to pay such sums that should have been deducted, on such terms as are determined by the State Board of Trustees, and thus receive the credit for prior service and membership service to which the member may be entitled for teaching under the provisions of this Act prior to August 31, 1943, or not to pay such sums and thus acquire the status of a beginning teacher as of September 1, 1943, or if said member is not teaching at that time, as of the date when the member resumes teaching under the Act. Provided, the provisions of this Act shall apply only to deductions which should have been made from salaries of teachers prior to August 31, 1943, and to no other time." (Emphasis added)

We call your attention to the fact that in accordance with the provisions of Paragraph 1, Section 3, Article 2292-1, supra, that teachers electing not to become members of the Retirement System must have signed proper waivers "within a period of 90 days after September 1, 1937." From reading your request, we assume that the teachers inquired about have never executed waivers and that they have held eligible positions in the Teacher Retirement System since September, 1937.

In considering your inquiry, it becomes necessary that we look to the provisions of H. B. 602, supra, wherein it provides that "any members of the Teacher Retirement System from whose salary prior to August 31, 1943, a deduction or deductions have not been made, but which should have been made, in accordance with the provisions of this Act, may elect to pay such sums that should have been deducted, on such terms as are determined by the State Board of Trustees, and thus receive the credit for prior service and membership service to which the member may be entitled for teaching under the provisions of this Act prior to August 31, 1943, or not to pay such sums and thus acquire the status of a beginning teacher as of September 1, 1943." From a careful reading of this portion of the statute you can see that the teachers may elect to pay all delinquent payments from September, 1937, or they may elect not to pay any delinquent sum to the Teacher Retirement System prior to August 31, 1943, and thus acquire the status of a beginning teacher as of September 1, 1943, and make their delinquent deposits from that date to the present time. In other words, an election was given to a member coming within the terms of Paragraph (c) to become a teacher either as of the effective date of the Act or as of September 1, 1943. The proviso clause of said paragraph shows clearly that such a teacher could not become a "beginning teacher" after September 1, 1943.

In view of the foregoing, it is our opinion that the teachers who have been holding eligible positions since the inception of the Retirement System (September, 1937) must conform to the regulations prescribed in Paragraph (c), Section 8, H. B. 602, supra, and it is our further opinion that said teachers may make their delinquent payments retroactive to September, 1937, or they may elect to make their delinquent payments retroactive to September 1, 1943, and in no event can said teachers, under the assumed facts, make deposits now and occupy the status of beginning teachers as of a time later than September 1, 1943.

#### SUMMARY

(1) Teachers who have held eligible positions in the Teacher Retirement System since its inception may make their delinquent payments from September 1, 1937, to date and become beginning teachers as of September 1, 1937, or

(2) They may elect to make their delinquent payments retroactive to September 1, 1943, and become beginning teachers as of that date.

(3) In no event can said teachers occupy the status of beginning teachers as of a time later than September 1, 1943. Paragraph (c), Section 8, Article 2922-1, V.A.C.S.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By *J. C. Davis, Jr.*  
J. C. Davis, Jr.  
Assistant

APPROVED JAN. 17, 1947

*Price Daniel*  
ATTORNEY GENERAL

JCD:jrb

Approved Opinion Committee  
By BWB  
Chairman