



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

March 23, 1959

Honorable Frank M. Jackson
Executive Secretary
Teacher Retirement System of Texas
Austin, Texas

Opinion No. WW-577

Re: Whether the Teacher Retirement System, under the facts stated, is authorized to make a refund of the accumulated deposits to a member.

Dear Mr. Jackson:

Your request for an opinion recites that a member of the Teacher Retirement System who was employed in a teaching position at the University of Texas, resigned his position on October 31, 1958. The member executed his application for a refund of accumulated deposits on November 7, and the payroll Division of the University submitted this application for refund together with their monthly report covering the member's final deposit on December 2. The Teacher Retirement System was advised on December 2, that the member had been re-employed by the University in a teaching position with another department. Upon receipt of this information, the Retirement System declined to make a refund. The member contends that he became entitled to a refund of his accumulated deposits upon executing his application therefor and the fact that he returned to the teaching profession prior to the refunding of his accumulated deposits is immaterial. Your request further recites that it has not been the policy of the Retirement System to make refund of accumulated deposits in such cases.

Subsection 3(b) of Section 3 of Article 2922-1 reads in part as follows:

"3. Termination of Membership.
Membership in the Retirement System shall cease and terminate if:

" . . .

"(b) The member, while absent from service withdraws his accumulated deposits; . . ." (Emphasis added.)

Subsection 1 of Section 8 of Article 2922-1 reads as follows:

"Sec. 8. Return of Accumulated Contributions Upon Cessation of Membership.

"1. Should a member cease to be a teacher or auxiliary employee, except by death or by retirement under the provisions of this Act, he shall, upon application in writing as prescribed by the State Board of Trustees, be paid in full the amount of the accumulated contributions standing to the credit of his individual account in the Teacher Savings Fund, and his account shall thereupon be closed and his membership (if not previously ended) shall be terminated." (Emphasis added.)

In view of the provisions of the foregoing statutes we do not believe that the member has either ceased to be a teacher, within the meaning of Section 8, or that he has withdrawn his accumulated deposits while absent from service, within the meaning of Section 3, quoted above.

The law does not contemplate that a member who is only temporarily absent from the teaching profession may by reason thereof be entitled to a return of accumulated deposits. In fact, when the application for refund reached the Retirement System, stating that the member had permanently left the teaching profession, the member had been re-employed by another department of the University. Hence, it cannot be said that the member at that time had either withdrawn his accumulated deposits while absent from service, or that he had ceased to be a teacher within the meaning of the above quoted provisions of the Teacher Retirement Act.

You are, therefore, advised that the Teacher Retirement System is not authorized to make a refund of the member's accumulated deposits under the facts stated.

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SUMMARY

The Teacher Retirement System of Texas, under the facts stated, is not authorized to make a refund of a member's accumulated deposits.

Yours very truly,

WILL WILSON
Attorney General of Texas



By
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LP:rm:mfh

APPROVED:

OPINION COMMITTEE
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REVIEWED FOR THE ATTORNEY GENERAL
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