



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

**WILL WILSON  
ATTORNEY GENERAL**

October 2, 1957

Honorable Gordon H. Lloyd  
Executive Secretary  
Employees Retirement System  
of Texas  
Austin, Texas

Opinion No. WW-268

Re: Construction of House  
Bill No. 441, Acts 55th  
Legislature, Regular  
Session, Chapter 116,  
page 240, and related  
questions.

Dear Mr. Lloyd:

Your letter of September 19, 1957, requests an Opinion by this office regarding the status of either State employees, or teachers or auxiliary employees, who have previously waived membership or withdrawn deposits with the Employees Retirement System. In connection therewith you have submitted for our consideration the following questions:

"1. A person who waived membership with the Employees Retirement System within 90 days from the establishment of the System September 1, 1947, and who now desires to become a member of the Employees Retirement System and deposit with this System the amounts which would have been paid by him if he had not waived.

Question: Is the Employees Retirement System permitted to accept such amounts from this person and grant all prior service and membership service to which this person would have been entitled had he never signed a waiver?

"2. A person who had signed a waiver electing not to become a member of the Employees Retirement System, but who thereafter became a member of the Teacher Retirement System and now desires to deposit with the Employees Retirement System the amount that would have been paid by him to the Employees Retirement System had he not signed a waiver.

Question: Is the Employees Retirement System permitted to accept the deposits of the teacher or auxiliary employee, now a member of the Teacher Retirement System, for the amount that would have been paid by him as a State employee, had he not signed a waiver with the Employees Retirement System, and grant him such service to which he would have been entitled had he not signed the waiver?

"3. A person who had become a member of the Employees Retirement System, resigned his position and withdrew his contributions from the Employees Retirement System, but who thereafter became a member of the Teacher Retirement System and now desires to replace the amount withdrawn from the Employees Retirement System and re-establish his service for retirement purposes.

Question: Is the Employees Retirement System permitted to accept deposits from this person who had withdrawn, but subsequently became a member of the Teacher Retirement System, and grant him, after replacement of the amount withdrawn, the membership and prior service to which he would have been entitled had he not withdrawn his contributions?"

The answer to the questions submitted depends upon the legal construction of House Bill No. 441. The provisions of House Bill 441, pertinent to our inquiry, are as follows:

"5. Reinstatement of Former Service Credits.

"(a) Any teacher or auxiliary employee who has heretofore executed a waiver of membership in the Retirement System shall have the privilege of electing to receive full former service credit, provided such teacher or auxiliary employee after becoming a member of the Retirement System shall deposit before August 31, 1959, all back deposits, assessments and dues which he would have paid or deposited had he been a member of the System during each of the years that he actually taught or was employed as an auxiliary employee in the public schools following the date on which he first became eligible for membership in the System, together

with interest from the date each amount was payable at the rate of two and one-half per cent ( $2\frac{1}{2}\%$ ) per annum.

"(b) Any person who heretofore became a member of the Retirement System and who thereafter terminated such membership and withdrew his accumulated deposits, but who has since returned to service as a teacher or auxiliary employee or who returns to service as a teacher or auxiliary employee prior to September 1, 1959, and who, following such resumption of membership, renders service for five (5) consecutive years, shall have the privilege of depositing the total amount withdrawn plus all back assessments and dues, together with simple interest thereon at two and one-half per cent ( $2\frac{1}{2}\%$ ) per annum from date of withdrawal of same to date of redeposit, and thereupon such member shall be entitled to credit for all prior service and membership former service to which he was entitled prior to such termination and withdrawal. The amounts to be deposited shall be determined in each case by the Board of Trustees and in no event shall any such person be granted retirement upon such former service credits until the amount so determined shall have been paid in full.

"Provided further, that membership in either the Teacher Retirement System or the State Employees Retirement System would qualify an individual to deposit funds in either of the two systems under the provisions of this Act." (Emphasis added)

Pursuant to the provisions of Section 63 of Article XVI of the Constitution of Texas, reciprocal joint retirement is authorized and provided for under the Teachers and Employees Retirement Systems of Texas. This constitutional provision reads as follows:

"Sec. 63. Qualified members of the Teacher Retirement System, in addition to the benefits allowed them under the Teacher Retirement System shall be entitled to credit in the Teacher Retirement System for all services, including prior service and membership service, earned or rendered by them as an appointive officer or employee of the State. Likewise, qualified members of the Employees Retirement System of Texas, in addition

to the benefits allowed them under the Employees Retirement System of Texas shall be entitled to credit in the Employees Retirement System of Texas for all services, including prior service and membership service, earned or rendered by them as a teacher or person employed in the public schools, colleges, and universities supported wholly or partly by the State. Added Nov. 2, 1954."

The foregoing constitutional provision permits free and easy passage of career employees of the State between teaching and State department service. It enables administrative officials to employ personnel from positions covered under one system to positions covered under the other system, without disturbing the accumulated credits for retirement purposes.

Subsequent to the adoption of this constitutional amendment in November, 1954, the Legislature enacted Senate Bill No. 212, Acts 54th Legislature, Regular Session, Chapter 75, page 356, codified as Article 6228a-2 of Vernon's Civil Statutes. Section 2 (A) and (B) of said Act provides in substance that members of either the Teachers or the State Employees Retirement Systems who have terminated or waived membership in either of said Systems may claim and receive credit for prior service in either System by complying with the provisions thereof. It is noted, however, that there is a limitation with respect to the time in which a member may comply with such provisions. Consequently, before the enactment of House Bill 441, many members of both systems, for various reasons, were unable to purchase credit for prior service.

It is apparent that if House Bill 441 be construed to permit the purchase of credits for prior service in the Employees Retirement System in each or either of the three categories presented by your letter, it must be by reason of the final paragraph of said Bill which we have underscored for emphasis. The meaning of this paragraph is not free from doubt. We think, however, that that portion thereof which authorizes a member of either system to deposit funds in either the Teacher Retirement System or the Employees Retirement System is very significant in arriving at the intention of the Legislature. To say that an employee is granted the right to deposit funds in either system but is denied the right to receive credit for prior service in the Employees Retirement System would be to grant such employees a right, but to deny him the benefits logically accruing therefrom. We conclude, therefore, that House Bill 441 authorizes state employees or teachers, as the case may be, in each of the three categories set forth in your letter, to receive credit for prior service

as a State employee by complying with the provisions of said Bill. The effect of our interpretation is to make the provisions of House Bill 441 applicable to the purchase of prior service credits in the Teachers Retirement System, equally applicable to the purchase of such credits for prior service in the Employees Retirement System.


Each of your three questions is accordingly answered in the affirmative.

S U M M A R Y

The provisions of House Bill No. 441, Acts 55th Legislature, Regular Session, Chapter 116, page 240, pertaining to the purchase of credits for prior service in the Teachers Retirement System by members of either the Teachers or Employees Retirement Systems are equally applicable to the purchase of credits for prior service in the Employees Retirement System by members of either system.

Yours very truly,

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By   
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Assistant

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APPROVED:  
OPINION COMMITTEE

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REVIEWED FOR THE ATTORNEY GENERAL  
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