

Opinion No. 65-106

June 22, 1965

BY: OPINION OF BOSTON E. WITT, Attorney General Oliver E. Payne, Deputy Attorney General

TO: John C. Hays, Executive Secretary, Public Employees Retirement Association, Santa Fe, New Mexico

QUESTION

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1. Based on Chapter 284, Laws 1965, may an affiliated public employer of municipal policemen and firemen elect to make an additional contribution so that these employees will become eligible to receive a greater annuity without at the same time making additional contributions so that these employees are covered for survivor benefits?
2. If an affiliated public employer should decide some time in the future to pay additional employer contributions, would such contributions have to be paid from July 1, 1965?

CONCLUSIONS

1. Yes.
2. No.

OPINION

{*178} ANALYSIS

Substantial amendments were made to the Public Employees Retirement Act by the 1965 legislative session. Section 5-5-10, N.M.S.A., 1953 Compilation, was one statute amended by Chapter 284, Laws 1965. Amended, this section provides that the affiliated public employer of municipal policemen and firemen may elect by resolution duly adopted to pay into the employers' accumulation fund "either ten per cent or eleven and one-half percent" of the regular salary of each police member and each fireman member in its employ. If the employer elects to pay the increased contributions, the municipal police and firemen members who retire will receive a higher annuity.

The same Chapter 284, Laws 1965, enacted a new provision (Compiled as Section 5-5-20.1) relating to a Survivors' Benefit Fund. This provision is optional with the employer of municipal policemen and firemen. If the employer adopts a resolution to cover these employees for purposes of survivors' benefits, two percent of {*179} the regular salary of each municipal police or firemen member must be paid into the Fund.

Your first question is whether the employer of municipal police and firemen members may elect to pay the additional employer's contribution for annuity purposes without at the same time electing to pay the two percent additional contributions in order for such employe to receive survivor benefits, and vice versa. Our answer is Yes.

The two provisions just mentioned are separate statutes and are not interrelated. The election of one without the election of the other creates no problems -- either legal or administrative.

You ask in your second question whether, if the employer decides not to pay the increased contributions at this time but decides to do so at a later date, the additional contributions would have to be paid from July 1, 1965. Our answer is No.

Insofar as survivor benefits are concerned, Section 5-5-20.1, supra, provides that the additional two percent shall be paid into the fund "on the first day of each month from and after July 1, 1965." We do not believe this language requires that should an employer decide at a later date, say 1968, to cover municipal fire and police members under the survivors' benefit fund, that the additional contributions have to be paid from the July 1, 1965 date. They need only pay them from the date the resolution was filed with the Public Employees' Retirement Board and the additional benefits became available to these employees. The same thing is true with regard to additional contributions for annuity purposes under Section 5-5-10, supra.