



THE ATTORNEY GENERAL OF TEXAS

AUSTIN, TEXAS

PRICE DANIEL
ATTORNEY GENERAL

October 18, 1949

Hon. B. B. Sapp, Director
and Executive Secretary
Teacher Retirement
System of Texas
Austin, Texas

Opinion No. V-937.

Re: The eligibility of a
retired teacher to re-
ceive retirement bene-
fits after having been
granted disability
benefits.

Dear Mrs. Sapp:

We refer to your letter which states in sub-
stance:

John Doe, age fifty (50), with thirty-
one (31) years creditable service, made ap-
plication for disability retirement although
he was eligible for service retirement, and
the Medical Board granted disability benefits.
He has not attained the age of 60.

Can disability payments be discontinued
at his request in order that his account may
be re-established, thereby making him eligi-
ble to make application for service retire-
ment?

Section 5, subdivision 1 of Article 2922-1,
the Teacher Retirement Act, concerns service retirement
benefits and provides in part:

"Any member may retire upon written ap-
plication to the State Board of Trustees . . .
Any member with thirty (30) years of credita-
ble service may retire at any time regardless
of the age obtained . . . Any member who has
accepted service retirement shall be ineligi-
ble and disqualified to resume and/or continue
employment in the public schools of Texas, and
also shall be ineligible, and disqualified to
be otherwise employed in the public schools of

this State; . . . provided further, that any retired member who accepts employment as a teacher, except in the present world conflict and for twelve (12) months thereafter, as above specified, shall forfeit all rights as a retired teacher and any and all claims to any retirement benefits under this Act. . ."

Under the submitted facts John Doe having had thirty-one (31) years of creditable service, could have applied for permanent service retirement rather than for disability retirement. However, to preserve his right to return to the teaching profession in the future when his health was regained, i.e., be restored to active service (Sec.5, subd.5(a), (b)), he chose to apply for disability retirement.

Section 5 of the Teachers Retirement Act concerning disability retirement benefits, provides in part:

"Upon the application of a member . . . any member who has had twenty (20) or more years of creditable service may be retired by the State Board of Trustees . . . on a disability retirement allowance provided that the Medical Board, (Sec. 6, subd.(12)) after a medical examination of such member, shall certify that such member is mentally or physically incapacitated for the further performance of duty, that such incapacity is likely to be permanent, and that such member shall be retired." (Subd.3).

"Upon retirement for disability a member shall receive . . . a disability retirement allowance . . ." (Subd.4).

"Should the Medical Board report and certify to the State Board of Trustees that such disability beneficiary is no longer physically or mentally incapacitated for the performance of duty, . . . and should the State Board of Trustees by a majority vote concur in such report, then the amount of his allowance shall be discontinued. . ."
(Subd.5 (a)).

"Should a disability beneficiary under the age of sixty (60) years be restored to

active service, his retirement allowance shall cease, he shall again become a member of the Retirement System, and any reserves on his membership annuity at that time in the membership Annuity Reserve Fund shall be transferred to the Teacher Saving Fund and to the State Membership Accumulation Fund, respectively, in proportion to the original sum transferred to the Membership Annuity Reserve Fund at Retirement. Upon restoration to membership, any prior-service certificate on the basis of which his service was computed at the time of his retirement shall be restored to full force and effect, and in addition, upon his subsequent retirement he shall be credited with all his membership service. No member eligible to retire for service at sixty (60) years of age shall be allowed to retire on a disability allowance . . ."
(Subd.5 (b)).

Under the quoted provisions of Section 5, once a member makes application for disability retirement benefits, and has been certified by the Medical Board and approved by the State Board of Trustees, he becomes a disability beneficiary under the Act as distinguished from a member of the Retirement System. He remains in that status until he attains the age of sixty when he automatically becomes retired for service (A.G.Opinion No.0-3834) or until he is restored to active service and membership status upon certification of the Medical Board to the Board of Trustees that he is no longer incapacitated for performance of duty and the Trustees vote to concur in the Medical Board's report. Under the facts submitted, John Doe has not attained the age of sixty, nor has he been restored to active service by Medical Board and Board of Trustee action which is necessary for restoration of his membership status in the Retirement System. The Act which changes the status of an active or contributing member to that of a retired member is the order or resolution of the Board of Trustees. Likewise, the Act which changes the status of a disability beneficiary to that of an active member is the order or resolution of the Board of Trustees.

Under the facts submitted, the teacher member made application for disability retirement benefits and not for service retirement benefits. Under the law, he could have applied for either. Had the member chosen to

apply for service retirement benefits, he would then have had the right to choose the manner in which his service retirement allowance should be paid. This choice included a selection of the maximum allowance to be paid during applicant's own life, or one of three options under any one of which he would receive a reduced allowance during his lifetime with payment of a certain amount thereafter to a beneficiary to be selected by the applicant. Sec.5, subd.7, of Art.2922-1, V.C.S.

SUMMARY

If a teacher, age fifty, with thirty-one years creditable service in the Teacher Retirement System, applied for, was granted disability retirement benefits, and has not been restored to active service and membership in the System, he may not be granted service retirement. Art.2922-1, Sec.5, subds. 1,3,4,6(a), 5(b), 7; Sec.6, subd.(12), V.C.S., as amended; A.G.Opinion No.0-3834.

Yours very truly,

ATTORNEY GENERAL OF TEXAS

CEO:mv

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APPROVED

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