

# MINNESOTA STATUTES 1953 ANNOTATIONS

## 351.12 RESIGNATIONS; VACANCIES; REMOVALS

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A commissioner appointed to fill a vacancy holds office until the next general election occurring after there is sufficient time to give the prescribed notice. He holds office until a successor has been elected and has qualified. Any eligible person, including the incumbent, may file as a candidate for that office in the primary. OAG March 19, 1952 (126-G).

Vacancy by death of a member of the county board occurring less than thirty days before the election is filled by appointment under the provisions of section 375.10. OAG Oct. 17, 1950 (126-H).

## 351.12 PAY TO EMPLOYEE ANNUAL LEAVE ALLOWANCE

The board of county commissioners does not have authority to pay vacation pay to a county officer even though the officer may have been entitled to a vacation prior to his death. Under this section allowances of this kind are made only to state employees. OAG Aug. 24, 1951 (125-A-33).

Whether or not an employee of a legislative commission is entitled to accumulated vacation leave benefits upon termination of his employment is a question of fact depending upon the terms of his employment. OAG May 28, 1951 (280-C).

The director of the tourist bureau whose salary was fixed by law, and who was in the unclassified service, may be paid for his 24 days accumulated leave allowance when transferred to the department of business research and development. OAG Sept. 8, 1947 (644-D).

The superintendents of the several state hospitals are employed upon an agreed salary for full time employment with a vacation of one month each year. If because of shortages of personnel it has been impossible for a superintendent to take his vacations annually, upon his resignation from state service he is entitled to pay for the two months of unused vacation. OAG Oct. 19, 1948 (644-D).

Employees of the department of rural credit who were not retained as employees after June 30, 1947, should be paid their accumulated vacation and overtime allowance out of the appropriation for the fiscal year ending June 30, 1947. OAG May 12, 1947 (644-T).

## CHAPTER 352

### STATE EMPLOYEES RETIREMENT ASSOCIATION

#### 352.01 DEFINITIONS

**HISTORY.** 1929 c 191 s 1; 1931 c 351 s 1; 1933 c 326 s 1; 1935 c 238 s 1; 1939 c 432 s 1; Mason's Supp s 254-1; 1941 c 391 s 1; 1943 c 622 s 1; 1945 c 38 s 1; 1945 c 284 s 1, 2; 1947 c 631 s 2-6; 1949 c 644 s 2, 3; 1951 c 441 s 2-8; 1953 c 320 s 1.

The retirement board determines whether or not an employee is entitled to membership by the presence or absence of the symbol on the payroll abstract. OAG Sept. 22, 1948 (331-A-1).

A university professor who has withdrawn from the faculty retirement plan to become a member of the federal retirement system does not thereby become ineligible to draw an annuity from the state employees retirement association. OAG Aug. 9, 1949 (331-A-1).

A state employee may accept employment by a legislative interim committee without losing retirement privileges and allowances. OAG Aug. 29, 1952 (331-A-1).

Employees of state teacher colleges or of the University of Minnesota, employed on a yearly basis, and who may or may not receive compensation every month of the year, under the term "allowable service" are given credit for 12 months each year. OAG May 8, 1947 (331-A-2).

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## STATE EMPLOYEES RETIREMENT ASSOCIATION 352.01

Members of the board who are paid upon a per diem basis are not state employees for purposes of the state employees retirement association. OAG May 26, 1948 (331-A-2).

Employees of the state soil conservation districts are not eligible for membership in either state or public employees retirement associations. OAG Aug. 22, 1951 (705-A-3).

An employee drawing a pension from the state teachers retirement fund retains membership in the state employees retirement association. OAG Oct. 27, 1951 (331-A-6).

Employees of the legislative research commission are deemed legislative employees and are not entitled to membership in the state employees retirement association. OAG Sept. 15, 1947 (331-A-7).

Employees of the Minnesota crop improvement association are state employees and entitled to membership in the state employees retirement association. OAG Jan. 6, 1948 (331-A-7).

Persons employed as bullhead fishermen under section 97.48, subdivision 4, are employees of the state. OAG June 8, 1948 (331-A-7).

The retirement board must accept the administration determination of a state agency in determining whether or not employees are casual laborers excluded from the provisions of the state employees retirement association, and must accept the symbol on the payroll abstract as proof. OAG Aug. 9, 1948 (331-A-7).

Employees of the bonus division of the department of veterans affairs are not "state employees" within the meaning of the state employees retirement fund law. OAG June 23, 1949 (331-A-7).

No credit is given for employment by the legislature prior to 1929 for less than five consecutive sessions. Legislative employees from January 1, 1931 to December 31, 1939, may have credit for service provided they make the required payment to the fund. OAG Sept. 26, 1949 (331-A-7).

Deputy registrars of motor vehicles are entitled to membership in the state employees retirement association, notwithstanding the provisions of Laws 1949, Chapter 131, but the office of the secretary of state is not authorized to make any contributions to the fund on account of these deputy registrars. OAG Sept. 26, 1949 (331-A-7).

The executive secretary of the state soil conservation committee receiving his salary from the University of Minnesota, state soil conservation committee, and the U. S. Department of Agriculture, is by law a member of the state employees retirement association, regardless of exclusion as employee of the University of Minnesota. OAG July 31, 1950 (331-A-7).

A trainee appointee appointed under section 43.32 and civil service Rule 8.9 is not eligible for membership in the state employees retirement association. OAG Dec. 4, 1950 (331-A-7).

Employees of the Student Union and Book Store at Mankato Teachers' College, appointed by the business managers of the college and whose salaries were paid from the Union and Book Store funds, and who were under nominal control of college activities fund committee, were not in the classified or unclassified service of the state. OAG Dec. 5, 1950 (331-A-7).

Under the state employees retirement law a member who received incidental compensation from the University of Minnesota while on active military service need not make payments into the fund in lieu of salary deductions in order to receive allowable credit for his military service. OAG Aug. 22, 1951 (331-A-9).

Under section 352.14 no retirement allowance is payable to an instructor at a state teachers college, not paid on a yearly basis, who is separated from the state service before the salary deductions have been made for a period of five years. OAG March 8, 1951 (331-A-12).

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## 352.015 MEMBERSHIP

HISTORY. 1945 c 284 s 2; 1947 c 631 s 7; 1949 c 644 s 4; 1951 c 441 s 1; 1953 c 320 s 2.

A beneficiary who feloniously takes the life of a member of the state employees retirement association is not entitled to refundment of the amount to the credit of the member. OAG Jan. 14, 1952 (331-A-11).

## 352.02 ASSOCIATION ESTABLISHED; MEMBERSHIP

HISTORY. 1929 c 191 s 2; 1931 c 351 s 2; 1933 c 326 s 2; 1935 c 238 s 2; 1941 c 391 s 2; 1943 c 622 s 2; 1945 c 284 s 3, 4; 1947 c 631 s 8; 1949 c 644 s 5-7; 1951 c 441 s 9-12; 1953 c 320 s 2.

A former member does not have to be a member for five years after taking refundment in order to be eligible to repay it. The requirement is merely that to have five years of allowable service claim after taking a refundment. OAG Aug. 7, 1951 (331-A-7).

In construing the state employees retirement fund, state service terminates upon the date of an automatic discharge in the same way as the civil service regulations do when the employee is absent without leave. OAG Feb. 11, 1953 (331-A-9).

The board of the state employees retirement association may correct an error and may change its records to reflect the actual status of the employment of an employee. On making such change all questions of fact are for the determination of the board. OAG Dec. 15, 1949 (331-A-13).

Under section 352.02, subdivision 4, as amended by Laws 1951, Chapter 441, Section 12, the five years of allowable service credit to be acquired by a member before he can repay his refundment need not be allowable service credit as a member of the association. OAG Sept. 12, 1951 (331-A-13).

Under section 352.02, as amended by Laws 1951, Chapter 441, Section 10, members may obtain credit for service prior to July 1, 1929, based upon a 3-year period after first becoming a member irrespective of having taken a refundment thereafter. OAG Jan. 2, 1952 (331-A-13).

Under Laws 1953, Chapter 320, an elected constitutional officer becomes a member of the state employees retirement association immediately upon election to do so. Such officer is entitled to credit from the date of appointment. Such officer may make refundment and claim credit for past service. OAG May 2, 1953 (331-A-13).

## 352.02 BOARD OF MANAGERS; OFFICERS

HISTORY. Amended, 1947 c 631 s 9; 1949 c 644 s 8.

The state employees retirement fund board may pay out of the retirement funds the necessary rental for housing the retirement officers. OAG June 14, 1951 (331-A-2).

The board of the state employees retirement association may correct an error and may change its records to reflect the actual status of the employment of an employee. On making such change all questions of fact are for the determination of the board. OAG Dec. 15, 1949 (331-A-13).

Notwithstanding the provisions of section 352.03 employees of the retirement board are subject to the provisions of the Civil Service Act. OAG April 2, 1952 (644-B).

## 352.04 PAYMENTS INTO RETIREMENT FUND

HISTORY. 1929 c 191 s 4; 1931 c 351 s 4; 1933 c 326 s 4; 1935 c 238 s 4; 1939 c 432 s 2; 1941 c 391 s 4; 1943 c 622 s 3; 1945 c 284 s 5-7; 1945 c 603 s 1; 1947 c 631 s 1, 10, 11; 1949 c 644 s 1, 9, 10; 1951 c 441 s 13, 14.

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## STATE EMPLOYEES RETIREMENT ASSOCIATION 352.04

Integration of private pension fund plan to unemployment compensation, social security, workmen's compensation, and other social legislation. 35 MLR 610.

The industrial commission is required to pay into the state employees retirement fund an amount equal to 56 percent of the total amount deducted from salaries of employees paid from the state compensation revolving fund through the division of boiler inspection. OAG Sept. 25, 1947 (331-A-4).

Salaries accruing to employees of the egg and poultry division and the market and produce inspection units of the department of agriculture, dairy, and food are subject to the 56 percent contribution. OAG Dec. 26, 1947 (331-A-4).

The office of district boiler inspector functions as a unit of state government, and the salaries of the employees are paid from revenue derived from its own activities. It is the unit rather than the department which must pay the 56 percent contribution into the state employees retirement fund. OAG Feb. 6, 1948 (331-A-4).

Where there are units of state government within a state department or agency which unit obtains income and revenue from its own activities, contributions must be made to the state employees retirement fund of the 56 percent authorized by Laws 1947, Chapter 631, Section 10 (3). This applies to the state boiler inspectors office, a division of the industrial commission. OAG Feb. 16, 1948 (331-A-4).

The legislature has no authority to appropriate funds belonging to the university acquired from sources other than the legislature through appropriations from the general fund and consequently the university is not required to pay into the state employees retirement fund in accordance with the Laws of 1947, Chapter 631, Section 10. OAG July 19, 1948 (331-A-4) (618-A-6).

Where an employee makes back payments through payroll deduction, a self-sustaining department must make a 60 percent contribution. OAG Dec. 4, 1950 (331-A-4).

The revolving fund of the department of education on-the-job training program is subject to payment into the state employees retirement fund of a sum equal to 60 percent of the amount deducted from salaries paid for on-the-farm program supervision. OAG Sept. 30, 1952 (331-A-4).

Under section 352.04, subdivision 5, clause 2, as amended by Laws 1947, Chapter 631, Section 11, state employees who have been employed by a county within the state for a period not less than five years, but have been members of the public employees retirement association for less than five years are entitled to make payments and obtain credit for service under the state employees retirement association law. OAG May 18, 1948 (331-A-7).

For the purpose of the State Employees Retirement Act the time an employee is on military leave should be included in the period of employment. OAG July 15, 1948 (331-A-7).

A former county employee is entitled to credit for service while on leave of absence for military service even though he had obtained a refund of his contributions to the public employees retirement association while on military leave. OAG July 21, 1948 (331-A-7).

A former county employee upon returning to the service of the county should pay into the state employees retirement fund for the entire period of his county employment including the while on military leave and the contributions for the time on military leave are based upon the salary received by the employee at the time of leave for military service. OAG July 23, 1948 (331-A-7).

Laws 1947, Chapter 631, Section 2, excludes certain employees from the provisions of the state employees retirement association, among which are casual labor service employees. Who are casual labor service employees is a matter for administrative determination based upon the facts in each particular case, and when so classified and noted by a proper symbol the retirement board must accept such symbol as proof such employees are not eligible to membership in the retirement association. OAG Aug. 9, 1948 (331-A-7).

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## 352.05 STATE EMPLOYEES RETIREMENT ASSOCIATION

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Under section 352.04, as amended by Laws 1947, Chapter 631, Section 10, the 56 percent contribution by the highway department is based upon actual deductions made from actual salary received and not upon deductions from erroneous pay checks issued and thereafter cancelled. OAG April 22, 1948 (331-A-12).

A state employee has no recourse if the legislature increases or decreases the deductions from his salary for the state employees retirement fund because the courts have construed such action to be an allocation of taxes over which the employee has no control or contractual rights. OAG Oct. 19, 1948 (331-A-12).

Where a member of the state employees retirement association was not a member at the time he entered military service, the period of military service prior to membership in the association could not have been included in computing the years of allowable credit as a member of the association. OAG Sept. 11, 1951 (331-A-12).

Deductions may not be made for state retirement fund purposes for calendar months during which no salary is received. OAG Nov. 19, 1953 (331-A-12).

## 352.05 STATE TREASURER TO BE TREASURER OF ASSOCIATION

HISTORY. 1929 c 191 s 5; 1931 c 351 s 5; 1933 c 326 s 1; 1935 c 238 s 5; 1941 c 391 s 5; 1945 c 284 s 8.

## 352.09 REFUNDMENTS IN CERTAIN CASES

HISTORY. 1929 c 191 s 9; 1931 c 351 s 8; 1933 c 326 s 5; 1935 c 238 s 7; 1939 c 432 s 3; 1941 c 391 s 8; 1945 c 284 s 9; 1947 c 631 s 12; 1949 c 644 s 11; 1951 c 441 s 15-17.

If the application for partial annuity was before the retirement board had its July meeting, the annuity should commence as of July 1, 1947; otherwise the annuity should commence as of the first day of the calendar month in which it was granted by the board. OAG July 23, 1947 (331-A-1).

When a refundment is made to a department it should include the 56 percent contribution paid and accepted under 352.04. OAG Nov. 18, 1947 (331-A-4).

Since the provision of section 352.09, subdivision 3 (3) is in conflict with the Federal Social Security Act, it is ineffectual, and the Minnesota division of employment and security is not bound thereby. OAG March 21, 1950 (331-A-4).

352.10 Repealed, 1945 c 284 s 1.

## 352.103 EX-MEMBER, RETURN TO STATE EMPLOYMENT

HISTORY. 1945 c 284 s 10; 1947 c 631 s 13; 1949 c 644 s 12; 1951 c 441 s 18, 19.

An annuitant who becomes an officer or employee of the legislature after the effective date of 352.01 is entitled to receive his compensation without deduction for the retirement fund and also his annuity from the fund. OAG July 15, 1947 (331-A-1).

An annuitant who returns to state service is entitled to his annuity during the period of his leave of absence. OAG July 23, 1952 (331-A-1).

## 352.11 RETIREMENT ANNUITY

HISTORY. 1929 c 191 s 11; 1931 c 351 s 10; 1933 c 326 s 7; 1935 c 238 s 9; 1939 c 432 s 5; 1941 c 391 s 10; 1945 c 38 s 2; 1947 c 631 s 1, 14; 1949 c 644 s 13, 14; 1951 c 441 s 20.

Laws 1947, Chapter 529, provides for the retirement of certain executive office aids. Although the governor's order permitting retirement is effective April 30, 1947, the retirement pension payments will begin as of the date of severance from the state payroll which was on May 12, 1947. OAG Aug. 8, 1947 (331-A-1).

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## STATE EMPLOYEES RETIREMENT ASSOCIATION 352.12

The words "last payment received" as used in section 352.11, subdivision 3, should be construed to mean "last payment accrued," and where a member dies after the accrual of annuity instalment and before actual receipt thereof, the instalment should be paid to the personal representative of the estate. OAG July 31, 1950 (331-A-1).

The state employees retirement association board may correct records to show that an employee became separated from the state service instead of going on leave of absence. OAG Jan. 4, 1954 (331-A-1).

### 352.113 DISABILITY RETIREMENT ANNUITY

HISTORY. 1951 c 441 s 21.

Under the State Employees Retirement Act, persons entitled to disability retirement annuity upon becoming totally and permanently disabled while employed, the annuity accrues irrespective of any change in employment status. OAG May 16, 1952 (331-A-1).

The executor of the estate of an annuitant, appointed by the probate court in Texas, is entitled to the accrued annuity if there be no beneficiary. OAG Feb. 11, 1953 (331-A-1).

For the purpose of state employees retirement fund, state service terminates upon the date of automatic discharge as provided in the civil service regulations relating to absence without leave. OAG Feb. 11, 1953 (331-A-9).

### 352.12 REFUNDMENT AFTER DEATH

HISTORY. Amended, 1947 c 631 s 15; 1949 c 644 s 15; 1951 c 441 s 22-24.

A member of the state employees retirement association may designate the beneficiary to receive payment in case of death. OAG Aug. 6, 1948 (331-A).

The state employees retirement laws do not prohibit a member from changing his beneficiary. To effect such a change, he must in writing nominate the new beneficiary. The written nomination need not be on the form furnished by the board. OAG Sept. 8, 1953 (331-A).

Where the annuitant predeceased her beneficiary, who died shortly after the annuitant's death without having made application for the payment due the annuitant at the date of her death, payment cannot properly be made until probate proceedings are held with respect to the annuitant's estate. OAG Sept. 9, 1947 (331-A-1).

Where an auditor's warrant in payment of the monthly annuity has been delivered to the annuitant during his lifetime and the annuitant dies before cashing the check and probate proceedings are had in his estate, the retirement board has no further duties to perform. OAG July 24, 1951 (331-A-1).

Since the 1951 amendment where a member of the state employees retirement association held an unindorsed warrant governing annuity from the retirement fund, after the member's death and in the absence of probate proceedings, the warrant should have been paid to the surviving spouse or if none, to the next of kin not less than 90 days after the death. OAG Sept. 19, 1951 (321-A-1).

An accrued annuity may be paid where the estate is probated in any state of the union. OAG Feb. 11, 1953 (331-A-1).

A public employee while on sick leave without pay at the time of his death, is authorized to receive interest as well as principal on his accumulated retirement deduction, the member being still on the active list. OAG Aug. 30, 1950 (331-A-11).

In case a former member dies before receiving refundment, it should be paid to the beneficiary even if application for the refundment was made but not received prior to death. OAG Sept. 18, 1951 (331-A-11).

# MINNESOTA STATUTES 1953 ANNOTATIONS

## 352.13 STATE EMPLOYEES RETIREMENT ASSOCIATION

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If there has been no change in beneficiary, subsequent divorce does not affect the rights of beneficiary to refundment. OAG Nov. 9, 1953 (331-A-11).

### 352.13 ANNUITIES, ALLOWANCES; PAID MONTHLY

HISTORY. Amended, 1951 c 441 s 25.

The words "last payment received" as used in section 352.11, subdivision 3, should be construed to mean "last payment accrued," and where a member dies after the accrual of annuity instalment and before actual receipt thereof, the instalment should be paid to the personal representative of the estate. OAG July 31, 1950 (331-A-1).

Under the state employees retirement law, monthly annuity accrues if the annuitant is alive at any time during the last day of the month. This applies to one who died at some time during the last 24 hours of the month. OAG March 2, 1953 (331-A-1).

### 352.14 DATE OF RETIREMENT

HISTORY. Amended, 1949 c 644 s 16.

### 352.15 FUNDS, NOT SUBJECT TO PROCESS

HISTORY. 1929 c 191 s 17; 1931 c 351 s 1; 1933 c 326; 1935 c 238 s 15; 1941 c 391 s 14.

Refundments to former employees of the University of Minnesota are subject to offsets for debts owed to the staff and employees loan fund of the University. OAG Oct. 14, 1952 (331-A-11).

## CHAPTER 353

### PUBLIC EMPLOYEES RETIREMENT ASSOCIATION

#### 353.01 DEFINITIONS

HISTORY. 1931 c 307 s 1; 1933 c 374 s 1; 1937 c 466 s 1; 1941 c 285 s 1; 1945 c 78 s 1; 1947 c 18 s 1; 1949 c 84 s 1; 1951 c 22 s 1-8; 1953 c 78 s 1, 18.

The employees of the Hutchinson Light and Power Commission are subject to the public employees retirement provisions and may not set up a pension plan of their own. OAG July 29, 1952 (59-A-33).

All school districts are subject to the public employees retirement law without any action on the part of the district. Teachers are not members of such association but are members of the state teachers retirement fund. OAG Oct. 29, 1947 (331-B-1).

A public school librarian who is eligible to membership in the teachers retirement fund is ineligible to membership in the public employees retirement association. OAG Dec. 26, 1947 (331-B-1).

Where one person divides his time equally between employment by the city of Fergus Falls and the independent school district of Fergus Falls and by virtue of his employment by the school district is a member of the state teachers retirement fund and deductions from his salary are made he is under the provisions of section 353.01 prohibited from becoming a member of the public employees retirement association. OAG Dec. 26, 1947 (331-B-1); OAG Jan. 6, 1948 (331-B-1).

An alderman is a full time employee and entitled to membership in the public employees retirement association even if during his term of four years, he received