

Opinion No. 46-4942

August 16, 1946

BY: C. C. McCULLOH, Attorney General

TO: James C. Enloe Assistant District Attorney Seventh Judicial District Socorro, New Mexico

{*265} We are in receipt of your letter of August 14, 1946 in which you ask for a construction of Section 57-701 of the 1941 Compilation. You state that a veteran was employed by the Torrance County Board of Education to teach in the public schools of Torrance County for the school year 1944-1945; that he taught for a period of nine weeks in the fall of 1944 until his induction into the Army about November 1st of that year. You further state that the certificate held by the veteran was a temporary one. However, I am familiar with the case and have been advised by the State Board of Education that the veteran, a Mr. Julio Chavez, held a new professional elementary certificate for the 1944-1945 school term and that he now holds a new professional elementary certificate; that both of these certificates show that he is two hours short in arithmetic and that he has one year to make up such shortage.

Under the certificate he is nonetheless fully qualified to teach. In view of these facts and the fact that he held a regular form of contract to teach at the time he was inducted into the army, it is my opinion that he is entitled to the same position or one of like seniority, status and pay.

Even if he held a temporary certificate, he would probably be entitled to re-employment. I find from the Board of Education that a temporary certificate is not the lowest form of certificate, and that it is contemplated that the holder of {*266} such a certificate will complete his requirements and eventually be issued a professional certificate.

Your attention is directed to the case of Kay v. General Cable Corp. 144 F.2d 653, where the Circuit Court of Appeals, construing the Federal statute, which is identical, said:

"Every consideration of fairness and justice makes it imperative that the statute should be construed as liberally as possible so that military service should entail no greater setback in the private pursuit or career of the returning soldier than is unavoidable."

By ROBERT W. WARD,

Asst. Atty. General