

Opinion No. 47-5009

April 12, 1947

BY: C. C. McCULLOH, Attorney General

TO: C. L. Rose, Superintendent of Public Instruction Department of Education Santa Fe, New Mexico

{*31} In your letter dated April 10, 1947, you enclose a letter from a school superintendent requesting information relative to the teacher tenure law. You state that a teacher teaching in a certain school left to enter the armed forces in 1942 and returned in January, 1946, and was re-employed for the balance of the 1946 term and given a contract for the year 1946-47. You are wondering whether this teacher comes under the teacher tenure law.

Your letter does not state the length of service of the teacher prior to the date he entered the armed services.

Section 55-1111 of the 1941 Compilation, Pocket Supplement, provides that after a class room teacher has served a period of three years and holds a contract for the fourth year in a particular district, he is entitled to a hearing before his services are discontinued and may appeal to the State Board from the order of the local board. Section 57-702 of the 1941 Compilation provides that any person, after having been in the armed forces, who is reinstated to a position, is to be considered as having been on leave of absence during his service in the armed forces and is entitled to be restored to his position without loss of seniority and is further entitled to participate in any benefits offered by the employer.

It thus seems to be apparent that if the teacher in question taught as a class room teacher for three years prior to entering the service, or if the service after returning, tacked on to the service prior to entering {*32} the army, amounts to three years in the same district, and the teacher had a contract for the fourth year, he would be protected by the teacher tenure law.