

## Opinion No. 49-5193

February 2, 1949

**BY:** JOE L. MARTINEZ, Attorney General

**TO:** Floyd Santistevan, Director Teacher Retirement Department of Education Santa Fe, New Mexico

{\*14} This is in reply to your letter of January 20, 1949, with regard to the various rights of a teacher who has been on retirement for reason of disability for a period of two years and who at the time of retirement met all tenure provisions of the laws and is now reemployed after proof of recovery from the disability which was the basis of retirement.

Section 55-1117, New Mexico Statutes Annotated, 1941 Compilation, specifically provides that the ineligible teacher may be retired "when such person is totally disabled from continuing his profession, as shall be determined by a certificate of medical examiners appointed by the Retirement Board" and sets forth various other standards of qualification. The same section further provides "when any person is so retired, he shall be entitled to receive **during the period of his total disability an allowance . . .**"

It is our understanding that to implement the law, the Retirement Board has adopted certain rules and regulations which require the disabled person to submit to a physical examination every six months and after disability is determined to have been ended, then the employee's right to compensation is terminated and he is required to return to his work.

Concededly, there is a certain amount of indefiniteness in the law but it is believed that the intention of the Legislature is clear. The plan was created to take care of disabled teachers during the period of their disability without regard to the permanency of the disability. During the period of the disability the teacher remains under the control and jurisdiction of the Board and for this reason the tenure of the teacher is continued uninterruptedly.