

## Opinion No. 49-5251

October 26, 1949

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

**TO:** R. H. Grissom Educational Budget Auditor Office of State Comptroller Santa Fe, New Mexico

{\*92} I have your letter of October 25, 1949, in which you ask whether supervisors and principals should be included as teachers in determining the number of teachers to be employed under the teacher-pupil ratio law, being Section 65-1107 of the 1941 Compilation, as amended by Chapter 129 of the Laws of 1949.

The Act states: "Not more than one (1) **teacher-** shall be employed,,: and then sets up the number of teachers to be allowed for a designated number of pupils in a particular school. The precise question is whether the word "teacher" is to be construed in a broad sense to include those persons who are certified as qualified to teach and who are employed in school work or in a limited sense as applicable to classroom teachers only. The definition of the term "teacher" was before the Supreme Court of this state in *Ortega v. Otero*, 48 N.M. 588, 154 P.2d 252. There the Court was construing the teacher tenure law as it existed in 1944. The benefits of the law at that time were extended to any "teacher having a written contract." The Court held that a rural school supervisor was to be included within the term "teacher". The Court stated:

"Where there is no such statutory definition of 'teacher' many courts have construed the term to mean all employees certificated as teachers. For example, the Supreme Judicial Court of Massachusetts declared that 'a principal is merely a teacher who is entrusted with special duties of direction and management.' *McDevitt v. School Committee of City of Malden*, 1937, 298 Mass. 213, 10 N.E.2d 100; *Downey v. School Committee of Lowell*, 1940, 305 Mass. 329, 25 N.E.2d 738. The Ohio Supreme Court said that the term 'teacher' in the teacher tenure act is not to be narrowly construed and may be so interpreted as to cover an assistant county superintendent. *State ex rel. Frank v. Meigs County Board of Education et al.*, 1942, 140 Ohio {\*93} State 381, 44 N.E.2d 455."

The Court's Holding was as follows:

"Our conclusion from all of the foregoing is that a rural school supervisor is a person employed for instructional purposes and is a teacher who is entrusted with special duties of supervising public instruction in the schools, which embraces counsel and instruction of other teachers in the matter of class room instruction, as well as personal professional contact with and instruction of pupils, and hence has a teacher's status under the provisions of 1941 Comp. Sec. 55-1113."

The holding of the *Otero* case above quoted, in brief, is that the word "teacher" includes any person employed for educational purposes who is certified as qualified to teach.

This, of course, would include supervisors and principals. The Legislature has been fully aware of the ruling of the Supreme Court on this subject, as evidenced by Chapter 125 of the Laws of 1945, passed by the first session of the Legislature meeting after the decision in the Otero case, wherein the benefits of the teacher tenure law were limited to classroom teachers. This office has consistently held in accordance with the ruling of the Supreme Court. In Opinion No. 4715, dated May 16, 1945, it was said:

"It would appear that the only distinction between a teacher and a class room teacher is that a class room teacher must teach classes in a classroom. Therefore, if the duties of a principal are solely of an administrative character and do not involve any class room teaching, the principal would not be entitled to the benefits of the teacher tenure law."

This opinion does not purport to say that principals are not teachers, but rather that they are not class room teachers and would not be entitled to any benefits accruing only to class room teachers.

In Opinion No. 4755, dated July 18, 1945, it was held that by the amendment to the teacher tenure law above referred to, a rural school supervisor was not entitled to the benefits of the teacher tenure act because he was not a class room teacher, although under the holding of the supreme court he would be included within the broad definition of "teacher".

The Legislature is presumed to be familiar with the decisions of the Supreme Court of the state and to base its statutes upon the interpretation of the Supreme Court of particular words used therein.

It is, therefore, the opinion of this office that the Legislature, in enacting Chapter 125 of the Laws of 1945, intended that the word "teacher" should be construed in its broad sense as including such persons as principals and supervisors, although those persons might not be engaged in class room teaching. You should, therefore, consider such personnel when determining the number of teachers allowed in a given school under the teacher-pupil ratiolaw.