

Opinion No. 50-5295

May 17, 1950

BY: JOE L. MARTINEZ, Attorney General

TO: Mr. Marshall S. Hester Superintendent, New Mexico School for the Deaf Santa Fe, New Mexico

{*148} I am in receipt of your letter of recent date requesting an opinion under the following set of facts:

You have in your employ a retired teacher from the New York School for the Deaf. She draws retirement pay from that state in an amount unknown to you. This retired teacher has taught at your institution and at the same time drawn retirement pay from the State of New York. She is approaching a period of service that will bring her within eligibility for teacher's retirement benefits under the New Mexico Teachers' Retirement Law. You ask an opinion on this question: In view of the above facts, is there any legal reason why said retired teacher above referred to should not be hired for the coming school year, beginning September 1, 1950?

Section 55-1118 N.M.S.A. 1941, states as follows:

"If any person retired under the provisions of this act {*149} shall also be entitled to benefits under any state or national retirement or old age benefit law, then the amount to be paid such person under this act shall be only the difference between the amount received under such other retirement or old age benefit law and the amount provided in this act."

It is evident from the clear statutory provisions above that the law contemplates such a situation by acknowledging the fact that under our state retirement law there will be people who are working for this state who are receiving old age benefits under another state or national law.

It is therefore my opinion that there is no legal reason why you cannot hire the above referred to teacher for the coming year beginning September 1, 1950, but this said retired teacher must clearly understand that when she reaches the period of service that would normally make her eligible for teacher's retirement benefits, such benefits as she will receive will be only the difference between the amount received under such other retirement or old age benefit law in the State of New York and the amount provided in this act.