

Opinion No. 50-5291

March 28, 1950

BY: JOE L. MARTINEZ, Attorney General

TO: Floyd Santistevan, Assistant Superintendent of Public Instruction Department of Education Santa Fe, New Mexico

{*142} This is in reply to your letter of March 24, 1950 requesting an opinion as to whether or not properly certified teachers employed by the Board of Regents of the Girls' Welfare Home at Albuquerque, {*143} are entitled to tenure protection by § 55-1111, Pocket Supplement, New Mexico Statutes Annotated, 1941 Compilation, (Chapter 89, Laws of 1949).

§ 55-1111, New Mexico Statutes Annotated, Pocket Supplement, (Chapter 89, Laws of 1949), reads as follows:

"On or before the closing day of school in each school district in the state whether rural, municipal or otherwise, the governing board shall serve written notice upon each classroom teacher certified as qualified to teach in the schools of the state and by it then employed stating whether it desires to continue or discontinue the services of such teacher for the ensuing school year. Notice to discontinue the service of such classroom teacher properly certified and who has served a probationary period of three (3) years and holds a contract for the completion of a fourth year in a particular district shall specify a place and date not less than five (5) days nor more than ten (10) days from the date of mailing such notice at which time said teacher may at his or her discretion appear before the board for a hearing. If the decision of the governing board is not satisfactory to the teacher he or she may appeal to the state board of education within ten (10) days from date of hearing, and should the state board of education find alleged causes insufficient for termination of his or her services, said teacher shall be considered employed for the following year under the terms of his or her then existing contract, provided said teacher shall be entitled to any additional compensation allowed other teachers of like qualifications and experience employed in the same unit or system, and in the event the compensation allowed other teachers of like qualifications and experience is reduced, such year. Provided further that teachers holding war emergency certificates and teachers whose professional qualifications are otherwise below those required by the governing boards or teachers employed to fill positions of teachers (employed to fill positions of teachers) who have entered the military service shall not be entitled to the benefits specified in this act. Failure to serve such notice shall be construed the same as if notice had been served that the board desires to discontinue the services of such teacher, and in such case the teacher may at any time within ten (10) days after the closing of school request the board to have a hearing and thereupon the board shall grant a hearing within ten (10) days from such request. Where a teacher is employed as provided herein such teacher shall within fifteen (15) days from the closing day of school or within fifteen (15) days after a decision is

rendered by the state board of education in case of an appeal to said board, either accept or reject in writing such employment and a contract covering said employment shall be executed as soon as practicable and not later than ten (10) days before the opening of the next school term.

No teacher shall be employed by the governing authority of any school district who, under the law in force, does not hold a teacher's certificate necessary for the position to be filled."

This section applies only to teachers in school districts, either rural, municipal, or otherwise, and would not apply to state educational institutions, under the language of the section itself. {**144*} § 45-504 of the 1941 Compilation specifically designates the Girls' Welfare Home as a state institution and § 45-502 of the New Mexico Statutes Annotated, 1941 Compilation, authorizes the said Board of the Girls' Welfare Home to educate the inmates therein. Therefore, the Board has the power to hire teachers. They are not under the authority of any school district. This statute specifically governs the employment of the teachers. Therefore, it is my opinion that teachers employed by the Board of Regents at the Welfare Home, even though properly certified, are not entitled to tenure protection under the foregoing statutes.