

## Opinion No. 51-5372

June 12, 1951

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

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

{\*50} This letter is in reply to your request of June 8th for an opinion on certain questions that have arisen relative to disability retirement.

In case of a teacher or other employee retired for disability, under {\*51} the terms of § 55-1117, while the statute is silent on the question, it is my opinion that the State Teacher Retirement Board and the School Board or Board of Regents retiring such person have implied authority to determine whether such retired employee continues in a state of total disability so as to be legally entitled to receive any further allowance.

In 59 C.J. 973, on the question of interpretation it states that:

"A statutory grant of power or right carries with it, by implication, everything necessary to carry out that power or right and make it effectual and complete."

Applying this to the immediate question, since § 55-1117 provides that persons retired thereunder "shall be entitled to receive, during the period of his total disability," an allowance based on service and salary, and since, under § 55-1121 N.M.S.A. the Retirement Board and the local school or institution authorities are responsible for the approval of warrants for the payment by county or institution treasurers of such retirement pay, it is my opinion that the board and the county or institution authorities necessarily have an implied authority to determine whether employees who have been retired for total disability continue in such disabled status. This is necessary so that such boards or authorities may know that they are legally exercising their authority in approving warrants for the payment of retirement funds to such persons.

Having the authority to determine the status of a retired employee's disability, the board and school authorities, in my opinion, have the necessarily implied authority to employ reasonable means to determine the status of physical disability of these retired employees. This would include the requirement by the board that the employees submit themselves to medical examination, as well as permit the board to require these employees or teachers to themselves submit medical evidence of their physical condition.

In reply to your second question, an examination of the statutes, particularly §§ 55-1117 and 55-1114, reveal that while the school or institution authorities, with approval by the state retirement board, can retire an employee for total disability, there is, in § 55-1117, relating to disability retirements, no specific provision permitting them to call such

persons from retirement back to active service, as is provided in the case of persons retired for age, by subsection (b) of § 55-1114 of the New Mexico Statutes Annotated. Such a provision as contained in the aforementioned sub-section of § 55-1114 cannot, by implication or interpretation, be read into § 55-1117, the section pertaining to disability retirement.

In my opinion an employee who has been retired for total disability and then found to be no longer so disabled as to be entitled to any benefits is thenceforth not subject to the direction or jurisdiction of the retirement board or the local school or institution authorities.

In reply to your third question it is my opinion that it is answered by an opinion of this office rendered December 11, 1945, numbered 4825, in which it was stated:

"\* \* \* after a teacher has retired, of course, the teacher would not be able to invoke the Teacher Tenure Law, Chapter 125, Laws of 1945. The two acts (the Tenure Law and the Retirement Law) are entirely inconsistent. The teacher is no longer an active employee but is merely on emeritus status and so would have no right to re-employment."

This 1945 opinion, while directed at a question concerning a teacher retired for age, applies equally to one retired for disability.

{\*52} In my opinion, when the board has determined that a teacher who has been retired for disability is no longer totally disabled, such teacher has no right to re-employment under the Teacher Tenure Act.