

Opinion No. 51-5401

August 22, 1951

BY: JOE L. MARTINEZ, Attorney General

TO: Mr. Floyd Santistevan Assistant Superintendent of Public Instruction Santa Fe, New Mexico

{*104} This is in reply to your letter of May 31, 1951, relative to the application of the Teachers' Retirement Law to a particular fact situation.

You ask whether or not the taking of an official leave of absence for a period of one year by a teacher would break the five year continuity of service required as a prerequisite to eligibility for retirement by § 55-1114, N.M.S.A., 1941.

This question has been dealt with indirectly in other opinions written by this office for the Teachers' Retirement Board. In Opinion No. 3790, dated December 10, 1941, this office advised that a leave of absence granted because of illness would not constitute such a break in continuity of service as to change a teacher's eligibility for retirement. In Opinion No. 4162, dated October 2, 1942, this office advised that a leave of absence granted to a teacher who wished to teach in the armed services of the country would not amount to a break in the continuity of service so as to effect eligibility for retirement.

Where a leave of absence is granted to a teacher by the proper authority employing such teacher and when such leave of absence contemplates a return to service, at some definite future time, then, in my opinion, there is no breach in continuity of service as to cause the teacher to be ineligible for retirement under the provisions of § 55-1114 N.M.S.A., 1941, requiring the last five years of service to be in the educational service in New Mexico consecutively and immediately prior to the date of retirement. However, I must point out that the time the teacher spends on that leave of absence while not in "the educational service in New Mexico" cannot be considered creditable service toward retirement.

I trust this will answer your inquiry fully.