

Opinion No. 51-5467

December 10, 1951

BY: JOE L. MARTINEZ, Attorney General

TO: Mr. Floyd Santistevan Director, Teachers' Retirement Department of Education
Santa Fe, New Mexico

{*177} In reply to your letter of November 16, 1951, in which you request an opinion as to whether or not the State Retirement Board can retire a school bus driver and operator for reason of disability, under the provisions set up by Chapter 225, New Mexico Session Laws of 1951, I have arrived at the following conclusion and opinion:

Sections 1 and 2, Chapter 225 New Mexico Session Laws of 1951 read as follows:

Section 1. "Every school bus owner-driver employed pursuant to the provisions of Section 55-1802, N.M.S.A. 1941 as amended who shall have driven a school bus, owned by him, over a regularly established route for a period of 20 years or more, provided the last 5 years are consecutive, under a salary or contract approved by the State Transportation Director, may be retired in the same manner and under the same terms and conditions as any other employee of the public schools, provided, however, that owner-drivers shall receive monthly sixty per cent (60%) of the average salary portion of the contract for the last five (5) years prior to retirement or a minimum of seventy-five dollars (\$ 75.00) whichever is the greater."

Section 2. "Every school bus owner-driver employed pursuant to the provisions of Section 55-1802, N.M.S.A. 1941 as amended who drives a school bus, owned by him, over a regularly established route shall be entitled to participate in all retirement benefits established by Sections 55-1114 to 55-1127, N.M.S.A. 1941 as amended; provided, however, that the retirement benefits be based upon a salary portion paid under contract."

The above statute is not only an addition to the Educational Employees Retirement Act, Sections 55-1114 to 55-1127 of the 1941 statute but is also a legislative directive amending that law, specifically making bus drivers subject to retirement under the Act.

{*178} It is my opinion that it was the intention of the Legislature, under Chapter 225 of the 1951 New Mexico Session Laws, to direct the retirement board for school employees that bus drivers be included in our retirement law and that if there are any conflicts in both laws that these conflicts are resolved as a general rule of statutory interpretation in favor of the later enactment, in the instant case the later enactment being Chapter 225 of the 1951 New Mexico Session Laws.

I trust that this fully answers your inquiry.