

## **Opinion No. 52-5579**

August 29, 1952

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

**TO:** New Mexico Educational Association 114 East Marcy Street Santa Fe, New Mexico

{\*287} In response to your inquiry of July 14th please be advised that this office does not consider itself under any duty to give formal opinions to any except State offices. However the question raised by your inquiry is of such wide-spread importance that we feel an opinion on this subject would be beneficial.

You raise the question of whether or not a tenure teacher who has been teaching in a particular school can arbitrarily be transferred to some other school within the county remote from the school in which she or he has been employed. You call our attention to the fact that in many cases if the Board is to have this power it will resolve in severe hardship upon the teacher and perhaps in some cases result in her being forced to resign thus violating the spirit of the Teacher Tenure Act.

The provisions of Section 55-1111, N.M.S.A., 1941 (Pocket Supplement) provides that notice of placement be given qualified teachers employed by County Boards of Education on or before the closing day of school. In 50 Am. Jur., Section 375, we find the general statement of law with respect to interpretation of the statute which we feel is in point in view of the fact that our statute is silent on the subject of where placement shall be made. This language is as follows:

"It is to be presumed that the Legislature did not intend a law to work a hardship or an oppressive result, and it is a general rule that where a statute is ambiguous in terms and fairly susceptible of two constructions, {\*288} the hardship which may follow one construction or the other may properly be considered. Sometimes, the courts to support their construction of a statute, refer to the absence of hardship thereof, or to the hardship which would result from a different construction of the law. Indeed, in some cases involving the construction of a statute, considerations of what causes hardship have potent influence. A construction should be avoided which would render the statute productive of unnecessary hardship, harsh or harmful consequences, or oppression, or arm one person with a weapon to impose hardships on another. There is even authority for the rule that a statute will not be so construed as to work hardship where such construction is not mandatorily required by the language employed. If extreme hardship will result from a literal application of the words of a statute, this may be taken as evidence that the legislature did not use them literally. Under this rule, general terms should be so limited in their application as not to lead to oppression."

Our Supreme Court in the case of State vs. Southern Pacific Company, 34 N.M., p. 30, 281 Pac. 29 has applied this rule. In an opinion written by Justice Bickley at page 310 attention is first called to the basic rule that if a statute is plain, certain and unambiguous

so that no doubt arises from its own terms as to its scope and meaning then interpretation is needless. The rules of construction apply only where the words used are of doubtful import. Justice Bickley then notes with approval, Lewis' Sutherland Statutory Construction, Vol. 2 (2d Ed.) Section 363 to the following facts:

"If a statute is valid it is to have effect according to the purpose and intent of the lawmaker. The intent is the vital fact, the essence of the law, and the primary rule of construction is to ascertain and give effect to that intent. \* \* \* In construing statutes the proper course is to start out and follow the true intent of the Legislature and to adopt that sense which harmonizes best with the context and promotes in the fullest manner the apparent policy and object of the Legislature. \* \* \*"

Again in the case of State vs. Llewellyn et al, 23 N.M. 43, in an opinion by Justice Roberts we find the court at page 69 citing with approval the following:

"Statutes will be construed in the most beneficial way which their language will permit to prevent absurdity, hardship, or injustice; to favor public convenience, and to oppose all prejudice to public interests." Sutherland on Statutory Construction, p. 913.

In view of the foregoing it is therefore our opinion that where placement of teachers having tenure results in injustice or undue hardship, that the situation arises where the true intent of the Teacher Tenure Act is violated. It would therefor follow that in all such cases the teacher in question would have the right to protest to the proper authorities and upon showing made, be entitled to relief from any manifest injustice or undue hardship.

Trusting that this fully answers your inquiry, I remain