

Opinion No. 52-5571

July 28, 1952

BY: JOE L. MARTINEZ, Attorney General

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

{*279} This is in reply to your inquiry of June 18th in which you posed the question of whether or not a teacher lost the protection of tenure rights when she failed to act upon an offer of employment from her District Board of Education, which offer carried a definite requirement for acceptance or rejection by a specified date.

Among other things Section 1, Chapter 202 of the Laws of 1941 as amended (Section 55-1111 NMSA) provides that:

"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 {*280} 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."

The language of this provision is clear. The failure of the teacher to accept the offer of the Board can not result in a contract of employment, for by the statute and by the terms of the offer she is required to act affirmatively.

It is my opinion that by such failure to accept the teacher loses her right to re-employment for the forthcoming year. Having thus by her own act removed herself from employment in the School District, she has surrendered any right to mandatory re-employment in that District.

She would still, in my opinion, upon obtaining re-employment as a teacher at some future time, be entitled to credit for her previous services so as to have the benefits of tenure in so far as annual contract renewals and the right to appeal any notice of dismissal or unfavorable re-employment contract.