

**Opinion No. 53-5647**

January 26, 1953

**BY:** RICHARD H. ROBINSON, Attorney General

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

{\*34} In your letter dated January 22, 1953, you request our opinion as to the status of a full-time employee of the public schools or public institutions coming under the Retirement Act who has been placed on a total temporary or total permanent disability status for retirement purposes. You inquire whether such a person can accept full-time or part-time employment in work other than the public schools or educational institutions and continue to receive retirement benefits for the duration of the disability.

Section 55-1117 N.M.S.A., 1941 Comp., Pocket Supplement, provides for the retirement of various persons under the School Retirement Act "when such person is totally disabled from continuing his profession, as shall be determined by a certificate of medical examiners appointed by the state retirement board," . . . Said section further provides, in part, "When any person is so retired, he shall be entitled to receive during the period of his total disability, an allowance as provided in section 2 (55-1115) hereof," . . .

In Opinion No. 4246, dated February 19, 1943, this office held that if a teacher is retired because of disability and is subsequently called back to active service in the teaching profession and is able to begin teaching actively, such action would be evidence that the total disability no longer exists and the benefits would therefore cease.

Since the determination of disability is made by medical examiners, such disability presumably would continue to exist until evidence from medical examiners would show otherwise. So long as the disability from continuing his profession continues to exist the person receiving retirement allowance would be entitled to continue receiving such allowance regardless of the fact that such person may be physically able to perform some other type of work and accepts full-time or part-time employment at such other type of work. The acceptance of such other employment would {\*35} be evidence to be considered by you and possibly the medical examiner in determining whether disability still exists from continuing in the teaching profession.

By C. C. McCulloh

Assist. Attorney General