

Opinion No. 53-5657

February 4, 1953

BY: RICHARD H. ROBINSON, Attorney General

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

{*44} This is in reply to your letter of January 26, 1953, in which you request an opinion concerning contemplated changes in the segregation policy in the public schools of a certain New Mexico municipality. Your request includes two separate questions, which we will answer in the order in which they were presented.

1. You state that this municipal board of education is planning to close a grade school as a segregated school for Negroes, but plans to continue this school on a non-segregated basis. You ask whether the Negro teachers now employed in that school who have acquired tenure under § 55-1111 N.M.S.A., 1941 Comp., have the right to continue service in the non-segregated school. In other words, do these Negro teachers lose their tenure rights by the change of classification of the school from a segregated to a non-segregated status?

In our opinion, Negro teachers who have acquired tenure under § 55-1111 will not lose tenure by this change of organization of the school. It is apparent from the inspection of that portion of the School Code relating to teachers (§§ 55-1101 to 55-1121, inclusive) that there is no requirement that a public school teacher shall be of any particular race or national origin, or that tenure shall depend upon such considerations. Teacher tenure requirements are set forth in § 55-1111, where it is provided that in order to acquire tenure a teacher must meet these minimum qualifications: (a) Be properly certified; (b) have served a probationary period of three years and hold a contract for the completion of a fourth consecutive year in a particular district. In this connection, we call your attention to Attorney General's Opinion No. 5374, addressed to your office, where we held that "district" as used in § 55-1111 means an administrative unit, rather than a geographical area.

In the case we are considering here, the fact that the status of the school is being changed from segregated to non-segregated can make no difference in the result reached. Sec. 55-1201 provides that under certain circumstances a board of education may provide for "separate rooms" for students of African descent. Sec. A. G. Opinion No. 5409, likewise directed to your office. However, the provision of this statute in no manner contemplate a separate school system, district, or entity administered by a separate governing board. At the present time the governing board of the school in question is the Municipal Board of Education of City "X", and such will also be the situation when the contemplated reclassification is completed.

2. Secondly, you mention that the Union High School Board of Education of this municipality, which has jurisdiction over the high school division of the school in question, plans to discontinue that division and transfer Negro high school students to the Union High School. You ask whether the Negro teachers now employed by the high school division of the Negro school who have tenure under § 55-1111, will retain their tenure after the contemplated change.

{*45} In our opinion, these Negro teachers will likewise retain their tenure after the change. This question is identical, in its essentials, to the problem discussed and answered above, and the reason for our opinion on this point is likewise identical. Here, as in question No. 1, supra, we have a contemplated change of a school from a segregated to a non-segregated status. The only difference is that in the first instance it is contemplated that Caucasian students shall move to a school presently segregated for Negro students, whereas in this second case it is planned to move Negro students to a school presently segregated for Caucasians. In this, as in the former case, the "governing board" or administrative unit" will be the same after the change is completed as it is at the present time.

In summary, it is our opinion that there is nothing in either contemplated change of school organization you mention which can alter the status of the Negro teachers who have acquired tenure under § 55-1111.

We trust that this opinion answers all your questions on this subject. If you have any further questions in this regard please do not hesitate to call upon this office for assistance.

By: W. F. Kitts

Assist. Attorney General