

## Opinion No. 53-5697

March 12, 1953

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

**TO:** Clarence E. Hinkle, President Board of Regents New Mexico Military Institute  
Roswell, New Mexico

{\*89} Sometime ago you requested an opinion from this office on the question of whether or not Maj. L. B. Plummer is entitled to retirement under the Teachers' Retirement Act. According to his record that was enclosed with your letter Maj. Plummer has taught at New Mexico Military Institute since 1921 until 1940 when he entered the Armed Services of the United States, except for absences of a few months in 1929-1930. Prior to his New Mexico service, he served nine years in the State of Texas as a teacher so he is entitled to four and one-half years credit and seven years of active service in the Armed Forces of the United States. Altogether he has over thirty years of service credit, besides for 1947-48 he was paid a salary by the Institute.

The original Act of 1937, which was amended by Ch. 237, Laws of 1939, and later amended by Ch. 207, Laws of 1941, did not include the provision that full time credit may be given to all persons with prior educational service in New Mexico for time served in the Armed Forces of the United States, who re-enter educational service in this State after honorable discharge from the Armed Forces of the United States. This amendment, however, was made by Ch. 50, Laws of 1945, and was also included in Ch. 74, Laws of 1947, which is the last amendment, being Section 55-1114, New Mexico Statutes Annotated, 1941 Compilation, pocket supplement.

The last part of sub-section (a) Section 55-1114, New Mexico Statutes Annotated, pocket supplement, contains this proviso:

"Provided, that any person who has been employed in any of said services in New Mexico for more than 30 years, although such employment may have been in more than one of such services, shall be temporarily reemployed and retired under the provisions of this bill, notwithstanding any requirement, that such person shall have served five (5) years consecutively and immediately prior to his or her retirement."

This last proviso is mandatory.

It is, therefore, the opinion of this office that Maj. Plummer is entitled to retirement under the provisions of Section 55-1114, New Mexico Statutes Annotated, 1941 Compilation, pocket supplement, as he has conformed with same.

It is further the opinion of this office that since he has over 30 years service, it is mandatory under Section 55-1114, New Mexico Statutes Annotated, 1941 Compilation, pocket supplement, that he be reemployed temporarily by the Institute and retired.

I trust that this fully answers your inquiry.

By: Hilario Rubio

Assist. Attorney General