

Opinion No. 53-5758

May 26, 1953

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. J. C. Enloe District Attorney Seventh Judicial District Socorro, New Mexico

{*157} This will acknowledge receipt of your letter of April 29, 1953, wherein you request our opinion upon the following question:

"Under the provisions of the so-called Teachers Tenure Law, may a County Board of Education assign teachers who have tenure under the law to such places as the Board deems proper, perhaps to comparable positions to those now held by them, even though such assignment result in removing such teachers from one County School to another, {*158} provided such removals do not result in reducing the salaries of such teachers?"

The applicable statute in Section 55-1111, 1941 Compilation, Pocket Supplement, which requires boards of education to serve written notice upon all teachers as to their re-employment or dismissal on or before the closing date of the school year, and allows certain teachers the right of notice and hearing and forbids their discharge except for cause.

Your attention is directed to the portion of this statute providing:

"Written notice of placement shall also be given to such qualified teachers employed by county boards of education on or before the closing day of school."

There can be little question, in our opinion, that the above quoted language of the Teachers' Tenure Act gives county boards of education the authority to transfer teachers from one school to another within the jurisdiction of such boards. Such is the rule in other jurisdictions having similar laws. **47 Am. Jur., Schools, Sec. 136.**

Although the question has not been decided by our Supreme Court, and the decisions of other states are based upon statutes of varying language, it is quite likely that the right of transfer by such county boards of education is limited by the qualification that such transfers must not be arbitrary, must be fair and reasonable, and that the board must be acting for the benefit of the school system. See **Board of Education vs. Hogge, (Ky) 239 SW 2d, 459; Ritchie vs. Dunn, 297 Ky. 410, 180 SW 2d, 284; County Board of Education vs. Young (Ga.) 1 SE 2d, 739; Weaver vs. Board of Education (W. Va.) 35 SE 2d, 679.** If any such transfer is arbitrary, and in effect is the equivalent of the dismissal of the teacher, it certainly is in contravention of the spirit of the law, and would be of doubtful legality.

It is therefore the opinion of this office that the county board of education may make the type of transfer mentioned in your letter, where the same is based upon the benefits to accrue to the school system, and no demotion or reduction in salary is contemplated.

By: Walter R. Kegel

Assist. Attorney General