

Opinion No. 53-5794

August 3, 1953

BY: RICHARD H. ROBINSON, Attorney General

TO: Honorable Paul Tackett District Attorney Second Judicial District Albuquerque, New Mexico

{*203} In your letter of July 22, 1953, you enclosed a letter from the School Superintendent of Sandoval County in which several questions are asked concerning teacher tenure and you request an opinion from this office relating thereto.

This matter involves an interpretation of § 55-1111, 1941 Comp., p.s., which reads in part as follows:

"On or before the closing day of each school year the governing board of each school district in the state whether rural, municipal or otherwise, shall serve written notice upon each class room teacher certified as qualified to teach in the schools in the state and by it then employed giving written notification of reemployment or dismissal. 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."

You state that the contract approved by the State Board of Education for employment of teachers does not specify any particular school but provides that the teacher shall teach in the public schools of the system to which he or she may be assigned. This form of contract seems to be all right, particularly for use by municipal school systems. It is to be noted that county boards of education, in addition to giving notices of reemployment or dismissal on or before the closing day of each school year, are also required to give at the same time written notice of placement. If placement or assignment of a teacher employed by the County Board of Education is given by such notice as required by law, the same would become a part of the contract of employment for that particular year.

You inquire whether the board of education must specify in its written notice of placement, given on or before the closing day of school, the following: (a) the specific school in which the teacher is to be employed; (b) the particular grade or grades which the teacher is to teach; or (3) the particular room where the teacher is to conduct his or her classes. In this connection, you have enclosed a copy of the form of notice of placement apparently used by the Sandoval County Board of Education in which the school district only is designated and not the particular school. If a school district contains more than one school such a notice of placement would be too indefinite to inform the teacher as to the exact school in which the teacher's services are to be performed. For that reason, it is suggested that the notice of placement designate both the {*204} school and the school district in order that the teacher may be definitely informed and in a position to accept or reject such employment in an intelligent manner.

It would seem that the designation of the particular grade or grades for which the teacher is to be employed and the particular room where the teacher is to teach several months before the opening day of the next school term would be an undue hardship upon the Board and perhaps cause considerable confusion due to the fact that teachers do change employment during the summer months and some reassignments as to grades and rooms will undoubtedly be necessary.

You further inquire whether during the school year, while the contract is in force or during the summer months after the contract has been accepted, a teacher may be reassigned to some other school in the same county system, assuming at all times that the Board's action is reasonable. In Opinion No. 4573, relative to this same section, it was held that any change in assignment after the contract is accepted would amount to a discharge of employment under the existing contract which would entitle the teacher to a hearing and an appeal, if desired, before a change of assignment could be made against the wishes of the teacher. You also state that in connection with an appeal to the State Board concerning reemployment of a teacher, relative to the place of employment during the ensuing year where a ruling by the State Board is made that said teacher should be reemployed in the school, is it necessary for the teacher to give a notice of acceptance or rejection of such employment within 15 days after the decision of the State Board. § 55-1111, 1941 Comp., p.s., in the third paragraph provides as follows:

"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 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."

Since the law requires the teacher to accept or reject in writing such employment within 15 days after a decision rendered by the State Board, it is our opinion that failure of the teacher to comply with such requirement would relieve the County Board of any further responsibility to employ or enter into a contract with such teacher unless the Board and the teacher mutually agree to waive such requirement.

I trust that this satisfactorily answers your questions.

By: C. C. McCulloh

Assist. Attorney General