

Opinion No. 53-5880

December 29, 1953

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. Floyd Santistevan, Director State Education Retirement State Education Retirement Board Santa Fe, New Mexico

{*311} Receipt is acknowledged of your letter dated December 22nd in which it is clear from the information furnished by you in copy of letter from J. L. Burke, Superintendent of the Jal Public Schools, written to you on November 30, 1953, in which Mr. Burke states that the retirement of Mr. Kniffen would begin November 1953. It is also plain that this person, Oscar Kniffen, continued to work in the Jal Public Schools since the new retirement law became effective on June 12 or 13th of this year, and was paid until October, 1953. Therefore he is seeking disability retirement under the new law which is Chapter 57 of the New Mexico Session Laws of 1953.

You request an opinion from this office as to whether Oscar Kniffen, who has worked as an employee of the Jal Municipal Schools, is entitled to disability retirement under Chapter 57, Laws of 1953, when he has only worked eight (8) years as school custodian at the Jal Municipal Schools.

Section 55-1117 of New Mexico Session Laws of 1953, reads as follows:

"Any board, institution, or office specified in Section 1 hereof may retire from service any regular employee when he is totally disabled from continuing such employment. Such disability shall be determined by such certificate of medical examiners or medical board as is or may hereafter be provided for. Such person shall be required to have made a written statement of evident disability to the employing board, institution, or office within six (6) months from date of expiration of his last contract. Such person shall have been employed in the above employments or in a combination thereof for not less than ten (10) years. Such retirement shall be approved by the State Education Retirement Board. When any person is so retired he or she shall be entitled to receive during the period of total disability, the amount represented by years of such service in New Mexico divided by 20 and multiplied by the amounts now or hereafter provided for retirement of employees of the State Educational System."

It is clear from the language of the above quoted section that it is mandatory on the State Education Retirement Board, that before they can retire any teacher or school employee for disability retirement, such employee of the schools shall have been employed in the above employments or in a combination thereof for not less than ten (10) years. This makes it mandatory on the Retirement Board that a school employee before being eligible for disability retirement must have not less than ten (10) years service.

In this case Mr. Oscar Kniffen has worked only eight (8) years and therefore is not eligible for disability retirement under the Act herein above quoted.

It is therefore the opinion of this office that Mr. Kniffen does not have the ten (10) years service necessary to qualify for disability retirement under Section 55-1117 of the 1953 New Mexico Session Laws, {*312} and therefore the State Education Retirement Board cannot approve his application for disability retirement.

Trusting that this fully answers your inquiry, I remain

By: Hilario Rubio

Assist. Attorney General