

Opinion No. 54-5966

June 8, 1954

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. Tom Wiley Superintendent of Public Instruction Capitol Building Santa Fe, New Mexico

{*425} This will acknowledge receipt of your letter of April 23, 1954, in which you inquire as to whether the State Board of Education, in hearing appeals under the provisions of § 55-1111, 1941 Comp., 1951 Pocket Supplement, must hear such matters "de novo".

The pertinent portion of § 55-1111 provides as follows:

"If the decision of the governing board is not satisfactory to the teacher he or she may appeal to the state board of education within ten (10) days from date of hearing, and should the state board of education find alleged causes insufficient for termination of his or her services, said teacher shall be considered employed for the following year under the terms of his or her then existing contract,"

This Section may be contrasted with § 55-1113, 1941 Comp., which specifically provides for a hearing de novo upon the appeal from a discharge of a teacher holding a written contract. Inasmuch as a hearing de novo is not required specifically by statute, we do not believe that it is the only type of hearing which the State Board may hold.

Under § 55-1111, the hearing should be limited to the causes for termination of services set forth at the hearing before the local board. If the teacher was granted a right, without abridgment, to present evidence to refute these charges, we see no reason why the hearing before the State Board could not be limited to a review of the transcript. If, on the other hand, the hearing before the local board was not a completely fair hearing, the teacher should be given the right to present whatever evidence he or she may have to refute these charges. Opportunity, of course, in any event, should be granted to argue the matter before the State Board of Education upon the question of whether the alleged causes for termination of service are sufficient.

By: Walter R. Kegel

Assist. Attorney General