

Opinion No. 54-6045

December 3, 1954

BY: RICHARD H. ROBINSON, Attorney General

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

{*516} In your letter dated November 19, 1954, you state that certain school cafeteria employees are paid out of funds which accrue from charges for school lunches, and that these funds are sometimes kept separately from other school funds. You further state that the employees are employed by the school authorities, and you are wondering whether such employees come under the School Retirement Act.

Section 55-1114 of the 1941 Compilation, pocket supplement, authorizes persons qualified as to length of service and age to be retired by the Board of Education, including "Any teacher, supervisor, custodian, nurse, principal, superintendent or other regular full time employee of the public schools. Since the school cafeteria employees are employed by the respective Boards of Education, they would come under the Retirement Act provided they are regular full time employees.

The definition of regular full time employees was discussed in Opinion No. 5264 dated December 8, 1949, a copy of which is enclosed herewith for your information. Under that opinion it is stated that the Legislature contemplated an employee as being a full time employee if he worked the hours in the day, the days in the week, and the months in the year customary to school employment.

Since the hours worked by various employees may vary, it is a question of fact in each individual case as to whether the employee is a regular full time employee as contemplated by the Legislature, if such employee comes within the definition as contemplated by the Legislature then such employee would be eligible for retirement under the Teacher Retirement Act when he meets the other qualifications.

By: C. C. McCulloh

Assist. Attorney General