

**Opinion No. 54-6049**

December 3, 1954

**BY:** RICHARD H. ROBINSON, Attorney General

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

{\*521} This will acknowledge receipt of your letter of November 4, 1954 in which you enclosed the application for disability retirement of Mrs. Beatrice Garcia, and asked us our opinion as to whether or not Mrs. Garcia is entitled to disability retirement.

This matter is covered by § 55-1117, 1941 Compilation, 1953 Pocket Supplement, the material portions of which provide as follows:

"Any board, institution, or office specified in Section 1 hereof (§ 55-1114) may retire from service any regular employee when he is totally disabled from continuing such employment . . .

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 {\*522} date of expiration of his last contract . . . ."

The application of Mrs. Garcia, which is enclosed, is dated August 9, 1954, and shows that she last taught in the school year ending June 30, 1953.

It is our opinion that the two sentences of § 55-1117 above quoted require that a person must be retired from a disability suffered while in the actual service of the schools of an employee, and that the application for such disability retirement must be made within six (6) months subsequent to the termination of the last contract. It is apparent that Mrs. Garcia's last contract terminated more than six (6) months prior to the submission of her application.

It is to be noted that the last three (3) years of service which Mrs. Garcia had, was in the capacity of a substitute teacher. While our former opinion on the subject (Opinion No. 4908) indicates that full time service is not required, it would seem that a contract of employment is required under the law, and if the Albuquerque School System operates upon the basis used by most other systems in the State, substitute teachers are not employed on a contract basis.

Therefore, it is the opinion of this office that upon the basis of the application submitted, Mrs. Garcia is not entitled to disability retirement.

By: Walter R. Kegel

Assist. Attorney General