

## **Opinion No. 55-6095**

February 4, 1955

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

**TO:** Honorable J. A. Conway, Member, House of Representatives, Santa Fe, New Mexico

In your letter dated February 2, 1955, you request an opinion on the following question: Under the provisions of § 73-12-16, does the phrase "prior to serving in New Mexico" exclude a teacher from out-of-state service credit if the teacher had service in New Mexico prior to the out-of-state service?

Section 73-12-16, subsection (a), of the 1953 Compilation provides, in part, as follows:

"(a) Any such person who is over the age of sixty (60) years, and who has been employed in the public schools, or by said institutions, boards, or offices, or in a combination of such services, of this state for at least fifteen (15) years, may be retired. Provided that in either case, half credit may be given for not more than ten (10) years of educational service in other states, territories and possessions of the United States prior to serving in New Mexico, to any contract teacher, and education system employee covered hereunder, if regularly employed in New Mexico prior to the passage of this act, . . . ."

This section was amended and reenacted in § 1, Chapter 57, Laws of 1953, and the language "prior to the passage of this act" should not present any great difficulty relative to persons regularly employed as teachers in New Mexico prior to the effective date of the act, which was June 13, 1953.

Relative to your question regarding the phrase "prior to serving in New Mexico", this language is susceptible of two interpretations, depending upon whether it is to be strictly construed or liberally construed. A strict interpretation would require that a teacher, in order to receive credit for out-of-state service, must have performed such service before the first service was performed in New Mexico. A more liberal interpretation would result in a construction under which the language would authorize out-of-state service rendered prior to the last service in New Mexico based upon which the retirement is sought.

In connection with retirement plans, the Supreme Court of New Mexico has adopted a policy of liberal construction within the limits of the language used. *State ex rel. Public Employees' Retirement Board v. Mechem, Governor, et al*, 58 N.M. 495, 273 P. 2d 361, and *State ex rel. Hudgins, et al v. Public Employees' Retirement Board et al*, 58 N.M. 543, 273 P. 2d 743.

It does not seem reasonable that the Legislature intended to discriminate against teachers who have faithfully served the public for the required period in connection with out-of-state service performed between periods of service in New Mexico and thus give undue advantage to teachers performing out-of-state service performed before first serving in New Mexico.

In view of the decisions of the Supreme Court reflecting a policy of liberal construction relative to retirement plans and in order to avoid a result which would be inequitable, it is our opinion that the language "prior to serving in New Mexico" should be given a liberal construction and that a teacher otherwise eligible for retirement should be given credit for out-of-state service within the terms of this section, if such out-of-state service was performed before the last service in New Mexico based upon which the retirement is sought.

By C. C. McCulloh

Assistant Attorney General