

Opinion No. 55-6298

October 5, 1955

BY: RICHARD H. ROBINSON, Attorney General

TO: Mrs. Georgia L. Lusk, Superintendent of Public Instruction State Department of Education, Santa Fe, New Mexico

In your letter of September 8, 1955 you ask whether a given individual is entitled to the protection afforded by Section 73-12-13, N.M.S.A., 1953 Compilation, commonly known as the Teacher Tenure Act.

The factual situation is as follows: The individual involved served as a teaching principal for a four year period, and thus acquired tenure. Later he was shifted to the position of principal of the school system and did no classroom teaching. During this time, of course, he was not under tenure. This person during the current year is now again employed as a teaching principal. You wish to know whether he is now under tenure or whether he must again serve a probationary period of three years before acquiring a tenure status.

Under the above mentioned section protection is given to a ". . . classroom teacher properly certified and who has served a probationary period of three consecutive years and holds a contract for the completion of a fourth consecutive year in a particular district . . ."

In **McCormick vs. Board of Education**, 58 N.M. 648, the Court stated:

". . . It is our conclusion that the acquisition of tenure by a teacher holding a contract for a fourth consecutive term, as provided by the act, carries with it the implicit right of a teacher to acquire tenure under proper circumstances at the commencement of a fifth or any subsequent consecutive term."

The statute in question is admittedly vague in its application to the particular problem presented. As we view it, however, it is applicable only to classroom teachers and it applies only to those teachers who are serving a fourth or longer **consecutive** term. The individual involved is not serving a fourth consecutive year as teacher. It is our conclusion that at the time he was promoted to the status of non-teaching principal he automatically was removed from that category of persons entitled to the protection of the law, and must now serve a probationary period of three years before again being entitled to such protection.

It is suggested that this matter be placed in your legislative file so that it may be brought to the attention of the next session of the Legislature so that they may clarify their intention in this matter.

By: Walter R. Kegel

Assistant Attorney General