

Opinion No. 56-6361

January 18, 1956

BY: RICHARD H. ROBINSON, Attorney General

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

You have asked our opinion on the following questions:

"1. If school bus contracts are made out in the name of husband and/or wife, are both eligible for retirement if each one drives a bus? If so would this be retroactive for each?"

"2. Can the contractor of one bus use his wife as the driver and designate her for retirement?"

The pertinent section is § 73-12-31, N.M.S.A., 1953 Compilation, as amended by Chapter 51, Laws of 1955, which reads as follows:

"Every school bus owner-driver employed pursuant to the provisions of Section 55-1802, New Mexico Statutes Annotated 1941, 73-19-2 New Mexico Statutes Annotated, 1953 Compilation as amended, who shall have driven a school bus owned by him, over a regularly established route for a period of twenty years or more, provided the last five years are consecutive, under a salary or contract approved by the state transportation director, may be retired in the same manner and under the same terms and conditions as any other employee of the public schools, Provided, however, that owner-drivers shall receive monthly sixty per cent of the average salary portion of the contract for the last five years prior to retirement or a minimum of one hundred dollars (\$ 100.00) whichever is the greater."

This section requires that the school bus be owned and driven by the person requesting retirement, and further requires that such person hold a contract for the operation of the bus as provided elsewhere by law.

If then, the husband and wife referred to in your first question, both own the school buses involved, and both drive them, and if the contracts are made out in the name of both, each would be eligible for retirement. Each must drive a bus. It is not possible for both husband and wife to qualify if only one bus is operated.

In answer to your second question, the wife would not be eligible for retirement because she has not been employed as provided by Section 73-19-2, N.M.S.A., 1953 Compilation.

By: Walter R. Kegel

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