

## Opinion No. 56-6394

February 17, 1956

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

**TO:** Mr. Abner Schreiber, Assistant District Attorney, First Judicial District, Los Alamos, New Mexico

We have your letter of February 9th in which you request an opinion upon the following question, to-wit:

Do teachers who are hired on a part time basis, that is, a teacher who teaches three classes five days a week; or a teacher who teaches two classes five days a week; or a teacher who teaches a full day for four days a week; or a teacher who teaches one full day each week, come within the provisions of Chapter 71, Laws of 1955, (§ 73-12-13, N.M.S.A., 1953)?

Chapter 71 of the Laws of 1955 was amended to what is known as Teacher Tenure Law of the State of New Mexico. Subsection (a) of Chapter 71, Laws of 1955, provides:

"On or before the closing day of each school year the governing board of education, hereinafter referred to as the governing board, of each school district, in the State, whether rural, municipal or otherwise shall serve written notice of reemployment of or dismissal upon each teacher by it then employed, certified as qualified to teach by the State Board of Education, hereinafter referred to as the State Board. . ."

Subsection (b) provides for the procedure to be followed in case a person has received the fourth contract, and is to be dismissed by the School Board. It is to be noted that this law does not provide for the classification of teachers who have been certified by the State Board of Education, that is, there is no distinction between one teaching full time and part time. It would therefore appear that a teacher who has a contract from the Board of Education that only teaches part of the time each week, would come within the provisions of Chapter 71. The only exceptions made to the application of this law are found in subsection (g) of the Act which reads as follows:

"(g) This section shall not apply to teachers holding substandard certificates or those whose professional qualifications are below the professional qualifications required by governing boards nor to teachers employed to fill positions of teachers who have entered military service."

However, none of the exceptions mentioned in this subsection would apply to the teachers mentioned in your letter. Since the Legislature did not see fit to classify the teachers on the basis of full or part time teachers, we are of the opinion that the Tenure Law would apply to teachers serving Los Alamos schools as above outlined. See *Frye vs. School Commission of Leicester*, 16 N.E. 2d 41, 300 Mass. 537.

Trusting we have answered your question, we remain

By Paul L. Billhymer

Assistant Attorney General