

## Opinion No. 56-6472

June 15, 1956

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

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

You have requested the opinion of this office as to the status of tenure teachers where the administration of a school system or group of schools is changed through consolidation from one administrative control to the other.

The applicable provision is Section 73-12-13 (b), N.M.S.A., 1953 Compilation, Pocket Supplement, which provides as follows:

". . . (b) The notice of dismissal required under subsection (a) of this section to a certified teacher who has taught **in a particular county or other particular administrative school unit** for three (3) consecutive years and holds a contract for the completion of a fourth consecutive year **in a particular district** shall specify a place and date for a hearing not less than five (5) days nor more than ten (10) days from the date of service of such notice at which time the teacher may appear. Notice of dismissal shall contain a statement of the cause or causes for dismissal upon which the governing board bases its decision to determine such causes specified in the uniform contract approved by the state board for New Mexico school teachers or any other good and just cause. Personal service of such notice shall be made as provided by law for civil service of process and proof thereof shall be made by the affidavit of the person making such service. Any teacher aggrieved by the decision rendered after such hearing by the governing board may within ten (10) days from the date of receipt thereof appeal to the state board." (Emphasis supplied.)

You will note from the portions of the above quoted statute which we have underlined that tenure applies to a particular administrative school unit and to a particular school district.

Upon consolidation one of the administrative units ceases to exist as the employer of the teachers in the school districts affected. The district to which the consolidated area is annexed is a separate unit and in our opinion is not obligated to follow the procedures of the so-called Teacher Tenure Act. The district which has disappeared by virtue of consolidation could not employ the teacher for the reason that it will have no school rooms under its jurisdiction and no budget for the employment of teachers.

Cases from other jurisdictions reach varying results and are of little help because of the difference in wording of the statutes involved. See Walker's Appeal (1938) 332 Pa. 488, 2 A. 2d 770 and Tittle vs. Consolidated Schools, 229 Ind. 208, 96 N.E. 2nd 334, which reach opposite results on similar questions.

Because the matter is not expressly covered by statute, and because the State Board of Education is not given authority to dispose of the matter by virtue of consolidation orders, it is impossible to state with certainty the possible outcome of a court decision in the matter. However, it is our opinion that because of the tenor of the language from the statute above quoted the Teacher Tenure Act would not apply to teachers employed by a school district which has been merged by consolidation into another.

By: Walter R. Kegel

Assistant Attorney General