

Opinion No. 56-6473

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 asked our opinion as to the effect of candidacy for public office on tenure of a teacher. The Teacher Tenure Act provides that causes for dismissal shall be any cause specified in the uniform contract approved by the State Board of Education or any other good and just cause. Such cause is to be determined by local boards of education in the first instance and ultimately by the State Board of Education. The decision of the State Board of Education will not be overturned unless "wholly arbitrary, unlawful, unreasonable or capricious." (McCormick vs. Board of Education, 58 N.M. 648, 661.)

Much the same situation would prevail on the discharge of a contract teacher during the school year. Section 73-12-15, N.M.S.A., 1953 Compilation, provides that no teacher having a written contract shall be discharged, "except upon good cause." The term "good cause" is not defined. A teacher has the right to appeal to the State Board of Education and the decision of the State Board of Education is final.

It would seem that the ultimate decision on whether or not a candidacy for public office should be grounds for dismissal of a teacher either during the contract year or by failing to renew a contract would be one to be determined by the State Board of Education. Cases from other jurisdictions generally conclude that so long as the candidacy does not interfere with proper performance of duties as a teacher, it is not ground for dismissal. Some of the cases, however, hold that a board of education may require a teacher to go on temporary leave of absence during the period of candidacy but meanwhile still protecting tenure and contract rights. See *East Chicago vs. Sigler* (Ind.) 36 N.E. 2d 760, 136 A.L.R. 1149, and *Adams vs. State* (Ea.) 69 So. 2nd 309, together with the annotation in 136 A.L.R. 1154.

By: Walter R. Kegel

Assistant Attorney General