

Opinion No. 57-232

September 13, 1957

BY: OPINION OF FRED M. STANDLEY, Attorney General Robert F. Pyatt, Assistant Attorney General

TO: Dr. H. Bashein, Superintendent, Los Lunas Hospital & Training School, Los Lunas, New Mexico

QUESTION

QUESTIONS

1. Are three school teachers employed by the Los Lunas Hospital and Training School within the coverage of the Educational Retirement Act?
2. Are such teachers within the coverage of the Teacher Tenure Law?

CONCLUSIONS

1. Yes.
2. Yes.

OPINION

ANALYSIS

Section 73-7-46, N.M.S.A., 1953 Compilation, 1957 Supplement, is as follows:

"The New Mexico Industrial School (sometimes called New Mexico Reform School), Girls' Welfare Home and the Los Lunas Hospital and Training School shall for the purposes of this chapter be treated as school districts and shall participate in the 'state public school equalization fund' as if they were in fact school districts, except that they shall receive no allowance on account of school bus transportation costs. Their participation in said fund shall be based upon average daily attendance, weighted as hereinabove provided. All students receiving instruction in the New Mexico Industrial School, and Girls' Welfare Home shall for the purpose of this act be considered high school pupils, and with respect to Los Lunas Hospital and Training School, on the basis of one full-time teacher for the first fifteen children or less and an additional full-time teacher for each additional fifteen children or **major** fraction thereof. For the purpose of computing average daily attendance, it shall not be necessary that any of the courses of study be subjects prescribed by the state board of education, but the courses of study shall be prescribed by the superintendent of the school and in the case of the Los Lunas Hospital and Training School, by its board of directors. The superintendent and such

latter board shall make reports to the state board of education as required in this chapter."

In reference to your first question, it should be noted that this statute in and of itself would not place teachers employed by the Hospital and Training School within the coverage of the Educational Retirement Law, since the language ". . . this chapter . . ." has no reference to the Educational Retirement Law. However, by the definition of members, contained in § 73-12-35, N.M.S.A., 1953 Compilation, 1957 Supplement, B (2), it seems clear to us that teachers at the above institution would be within the coverage of the Educational Retirement Law. Such definition reads as follows:

"full time employees of the state or public school districts or boards of education **who are employed as teachers** or administrators **and are holders of regular teachers'** or administrators' **certificates issued by the state board of education**, excluding county school superintendents who have no rural schools under their supervision." (Emphasis ours).

In our opinion, such definition includes teachers at the above institution since they are employees of the State employed as teachers. Of course, the statute last cited requires that they hold regular teachers' certificates issued by the State Board of Education. In answering your first question in the affirmative, our opinion is accordingly so conditioned.

Turning to your second question, § 73-12-15.1, N.M.S.A., 1953 Compilation 1957 Supplement, reads as follows:

"The provisions of Sections 73-12-13, 73-12-14, and 73-12-15 New Mexico Statutes Annotated 1953 Compilation and all subsequent legislation governing employment and discharge of contract teachers be and the same hereby are made applicable **to all properly certified teachers in state institutions whole salaries are derived in whole or part from the state public school equalization fund.**" (Emphasis ours).

In our opinion, such statute clearly requires an affirmative answer to your second question since by the provisions of § 73-7-46, supra, the Los Lunas Hospital and Training School participates in the State Public School Equalization Fund which is made the deciding factor by § 73-12-15.1, supra. Again, however, it is to be pointed out that the teachers at your institution must be properly certified to obtain the benefits accorded by § 73-12-15.1, supra.