

## Opinion No. 57-227

September 10, 1957

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

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

### QUESTION

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1. Is a contract teacher entitled to notice and a hearing on the question of discharge, even though she has not attained rights under § 73-12-13, N.M.S.A., 1953 Compilation, 1957 Supplement?
2. If so, the procedure to be followed?

#### CONCLUSIONS

1. Yes.
2. See opinion.

### OPINION

#### ANALYSIS

The teacher in question has been employed, under contract, by the local governing board for **one year**. This teacher then became involved in certain marital difficulties, doubtless not her fault, but which the local board sincerely believes will have a most adverse effect upon her students. These facts, as we understand them, have engendered the two foregoing issues.

Obviously, the fact that the teacher has been employed for only one year by the particular board with which we are concerned precludes this teacher from having acquired "tenure" under § 73-12-13, 1953 Compilation, 1957 Supplement. See Opinion of the Attorney General No. 4900. But the question remains, does this fact deny the teacher any rights to notice and hearing?

A subsequent section being § 73-12-15, N.M.S.A., 1953 Comp., 1957 Supplement, reads:

"No teacher having a written contract shall be discharged except upon good cause and after hearing on written charges, which, together with written notice of the time and place of hearing, shall be served upon said teacher at least five days prior to such hearing. Such teacher shall have the right to appeal within ten days to the state board of education, which board shall hear the matter de novo at a time and place to be by it fixed and the decision of such state board of education shall be final. Payment of such teacher's salary shall be terminated as of the date of the decision of the local board of education that such teacher shall be discharged. In the event the decision of the local board is not affirmed by the state board of education upon appeal, payment of such teacher's salary shall be reinstated in full."

Hence, if this section does not grant the teacher in question a right to notice and hearing, then such is true only by virtue of nonacquisition of "tenure" pursuant to § 73-12-13, supra. We do not believe that § 73-12-15, supra, is so limited. Both sections give certain rights upon threatened dismissal. Such rights under § 73-12-13 (b), supra, which reads:

"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 terminate the service of any teacher. Causes for dismissal of teachers shall be any 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 days from the date of receipt thereof appeal to the state board."

are more favorable to tenure teachers than those rights upon threatened dismissal accorded teachers under § 73-12-15, supra, Nevertheless, the existence of such rights under both sections points strongly to the conclusion that § 73-12-15 is not limited in its coverage to tenure teachers. The fact that more liberal rights upon threatened dismissal are granted by § 73-12-13, than are granted by § 73-12-15, is but evidence of the more favorable legislative policy granted tenure teachers.

We find that the cases give further support to our views. In *Bourne v. Board of Education of City of Roswell*, 46 N.M. 310, 128 P.2d 733, it was pointed out that what are now the two statutes above cited were designed, in part, to achieve different things, and contained different subject matter. In *Ortega v. Otero*, 48 N.M. 588, 154 P.2d 252, the Court noted how what is now § 73-12-15 was to further protect the employment status of teachers. While the ultimate questions for decision in the above two cases were not the same as here, nevertheless we deem these cases of material help in

solving this problem. We further realize that for many purposes both sections of the law must be read together and that the same result will often be achieved under each section. Indeed, such happened in the Ortega case.

Turning to the second question, we believe the answer is contained in the language used in § 73-12-15, when compared with the language of § 73-12-13, and when each is read in the light of surrounding circumstances.

A discharge under § 73-12-15 can only be for "good cause," a term which is not subject to precise definition. Doubtless, the legislature intended such result, that is to say, the legislature vested a broad, initial discretion in the local board as to what constitutes good cause. This office is not prepared to say that unfortunate marital matters would not constitute good cause for discharge, or that such grounds for discharge would establish arbitrary action by the local board.

Notice is required under § 73-12-15. Bearing in mind that informality surrounds administrative procedure in the public schools, we think a letter is sufficient written notice under this statute.

Section 73-12-15 does not prescribe the manner of service of the notice. You will observe that § 73-12-13, on the other hand, prescribes that the notice thereunder be served in the same manner as civil process. In our opinion, it would be sufficient to serve notice under § 73-12-15 by certified mail, return receipt requested, directed to the last address of the teacher as disclosed by the school district files. Service must be effected at least five days prior to the hearing.

The notice should set forth the charges, and should also set forth the time and place of the hearing. Correspondence attached to your request leaves considerable doubt as to whether this has been done.

The hearing before the local board may be informal, but should be fair and just in all respects.