

Opinion No. 59-129

August 28, 1959

BY: HILTON A. DICKSON, JR., Attorney General

TO: Mr. John Hays, Administrator Social Security Division Public Employees' Retirement Association 403 Don Gaspar Avenue Santa Fe, New Mexico

{*199} This is in response to your recent inquiry in which you asked for our opinion regarding a question arising out of the following fact situation:

On July 1, 1957, the Public Employees' Retirement Board and the Clovis Municipal Board of Education entered into an agreement whereby the old age and survivors insurance coverage of the Federal Social Security laws were made effective for employees of the Municipal Board who were in positions not requiring a valid State teachers' or administrators' certificate.

Your question is as follows:

Is the business manager of the Municipal Board covered by this agreement when he is not required by the State Board of Education to obtain a teachers' or administrators' certificate?

Our answer to your question is that such business manager is covered by the agreement.

Section 104 (f) of the 1956 amendments of the Social Security Act allowed New Mexico, among other states and the then Territory of Hawaii, to cover under the Social Security laws employees of the school districts not required to have valid teachers' or administrators' certificates under State law or regulation. See our Opinion No. 58-179 dated August 28, 1958.

It is clear that the State Board of Education acting pursuant to Section 73-1-7 N.M.S.A., 1953 Compilation, has the power to certify teachers and administrators. The agreement clearly states that the Municipal Board shall cover under the old age and survivors insurance coverage" . . . all services of employees of the Political Subdivision (the Municipal Board) who are in positions which **do not require** a valid State teachers' or administrators' certificate as a prerequisite for employment . . ." (words in parenthesis and emphasis supplied). A valid teachers' or administrators' certificate is not required by the incumbent of the business managers' position. Therefore, such position must be covered under the July 1, 1957 agreement.

By: PHILLIP R. ASHBY,

Assistant Attorney General