

## Opinion No. 59-69

July 1, 1959

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

**TO:** Honorable Tom Wiley State Superintendent of Public Instruction Santa Fe, New Mexico

The Teacher's Tenure Act covers only those persons who are actually engaged in instruction or teaching.

### OPINION

{\*111} This is a written reply to your request for an opinion on the following question:

Does the Teacher's Tenure Act, (Section 73-12-13, N.M.S.A., 1953 Compilation as amended) cover public school employees other than those engaged in actual instruction and direct contact with students for teaching purposes.

It is my opinion that the Teacher's Tenure Act covers only those persons who are actually engaged in teaching.

There are two decisions in this jurisdiction bearing on this question. **Broune v. Board** (1942) 46 N.M. 310, 128 P. 2d 733, involved a public school nurse who was not certified as qualified to teach. It was held that since the nurse was not certified as qualified to teach, she was not within the contemplation of the Tenure Act.

In 1944, the Tenure Act covered a teacher "or other employee certified as qualified to teach". In 1945, the Act was amended by inserting "classroom" before the word "teacher" and deleting the words "or other employee". Laws 1955, Ch. 71, Section 1, again amended the Act eliminating the word "classroom" and made the Act applicable to a teacher "certified as qualified to teach" "who has taught". The words "or other employees" were not reinserted.

{\*112} **Ortega v. Otero** (1944) 48 N.M. 588, 154 P. 2d 252, involved the attempted dismissal of a Rural School Supervisor certified as qualified to teach. The case turned on the question of whether the Supervisor was a teacher within the contemplation of the Teacher's Tenure Act as it was then read. The Court held the Supervisor was a teacher covered by the Tenure Act and in doing so gave the word "teacher" its broad construction.

The 1945 amendment obviously resulted from the decision in the Ortega case. It evidenced a clear legislative intent to limit the application of the Tenure Act to classroom teachers as distinguished from other certified employees of the public school

system such as superintendents and principals not actively engaged in teaching in the classrooms.

This was followed by the 1955 amendment which limits application of the Act to certified "teachers" who "have taught". Inasmuch as the legislature saw fit to carry forward the requirement that the teachers "have taught", it seems clear that the intent was to continue to limit application of the Act to certified personnel actually engaged in teaching students whether in or out of the classroom.

Trusting I have answered your inquiries, I am

E P. Ripley Special

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