

Opinion No. 65-31

February 17, 1965

BY: OPINION OF BOSTON E. WITT, Attorney General Thomas A Donnelly, Assistant Attorney General

TO: Mr. Rudy Gutierrez, Superintendent of Schools, Jemez Mountain School Dist. No. 53, Gallina, New Mexico

QUESTION

FACTS

The Jemez Mountain School District No. 53, now an Independent School District, was created in July, 1964, out of the Southwestern end of the Rio Arriba County School System, and is composed of a number of schools which were formerly a part of a county school district.

QUESTION

What is the tenure status of teachers in the Jemez Mountain School District No. 53 and which teachers had acquired tenure status under the school district out of which the Jemez Mountain School District No. 53 was created?

CONCLUSION

Teachers who possessed tenure status in the school system out of which the new school district was created, would continue to possess such same tenure rights.

OPINION

{*55} ANALYSIS

The question presented by you for determination has been in part {*56} considered by the New Mexico Supreme Court in **Hensley v. State Board of Education** (1962) 71 N.M. 182, 376 P2d 968, and within the Court construed Section 73-12-13, N.M.S.A., 1953 Compilation, and stated:

"As we read the statute, upon consolidation the governing board of the consolidated district becomes the governing board of the particular school districts which merge into and become a part of the newly created district. Actually the consolidated district was a continuation of the old districts which went into it. It follows, therefore, that the newly consolidated district was the "particular district" in which appellee earned tenure."

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We do not find, nor think the legislature intended, that a new designation of name or a different governing board destroys the actual existence of the "particular" districts which merged to form the consolidated district insofar as the acquisition of tenure is concerned."

While the Hensley decision dealt with the situation where two school districts were consolidated, we think the reasoning and statutory interpretation upon which such opinion was predicated has equal validity to the problem here under consideration. This result we believe is further supported by the judicial declaration stated in **Stapleton v. Huff**, 50 N.M. 208, 173 P2d 612, where the Court indicated:

"The legislature has recognized the sound public policy of retaining in the public school system teachers who have become increasingly valuable by reason of their experience and has, by statute, assured these public servants an indefinite tenure of position during satisfactory performance of their duties. **Ortega et al. v. Otero**, 48 N.M. 588, 154 P2d 252; * * *"

Reviewing our prior attorney general's opinions we find a multitude of decisions upon similar inquiries: Attorney General's Opinions Nos. 4885, 1946; 4900, 1946; 5374, 1951; 6472, 1956 and 59-66, dated June 24, 1959. The latter decision was discussed in the Hensley opinion of the New Mexico Supreme Court when the court adhered to a different holding. In light of the Hensley case, it is unambiguous that Section 73-12-13, supra, pertaining to the tenure rights of teaching personnel, has application to teachers who formerly were employed in schools of a school district which schools have subsequently become either merged, consolidated, or reformed into a new school district entity. To the extent that the above enumerated attorney general's opinions conflict with this opinion they are expressly overruled.