

## **Opinion No. 68-17**

February 5, 1968

**BY:** OPINION OF BOSTON E. WITT, Attorney General

**TO:** Mr. E. P. Ripley General Counsel Department of Education State Capitol Santa Fe, New Mexico

### **QUESTIONS**

Does a duly certified school instructor who has acquired tenure lose that tenure by virtue of accepting an administrator's position in the same school system in which he devotes more than one-half of his time to administrative duties?

### **CONCLUSION**

No.

### **OPINION**

#### **{\*32} ANALYSIS**

Your inquiry is basically asking whether a certified school instructor who once acquires tenure rights subsequently loses these rights upon accepting a position as a school administrator within the same school system. We conclude that he would not.

The new Public School Code, compiled as Chapter 77, Article 1, through 20, New Mexico Statutes Annotated, 1953 Compilation (P.S.) (being Laws 1967, Chapter 16, Sections 1 through 293), prescribes the requirements for acquiring tenure rights by certified school instructors and also the effect of these rights once acquired. (See §§ 77-8-11, 77-8-12 and 77-8-16, supra).

Since your question is limited to those instructors who have already acquired tenure rights, though employed as an administrator, we need not discuss the requisite of acquiring these rights. We only note that a certified school instructor who has not yet acquired tenure cannot compute, for this purpose, the period at which he spends over one-half of his employment time in administrative functions. (Section 77-8-13, supra). If tenure is acquired prior to becoming an administrator, however, we find nothing in the Code which divests the instructor of his tenure merely on the basis of being subsequently employed in an administrative position.

By: David R. Sierra

Assistant Attorney General