

Opinion No. 71-71

May 27, 1971

BY: OPINION OF DAVID L. NORVELL, Attorney General

TO: Mr. E.P. Ripley General Counsel Department of Education State Capitol Santa Fe, N.M.

QUESTIONS

FACTS

Junior Reserve Officer Training Course instructors whose specialty is military subjects do not necessarily meet educational requirements as required of certified teachers.

QUESTIONS

Does section 77-2-2 H require that the State Board certify Junior Reserve Officer Training Course instructors? If so, do these instructors thereafter acquire tenure and educational retirement rights?

CONCLUSION

See Analysis.

OPINION

{*103} ANALYSIS

Section 77-2-2 H, N.M.S.A., 1953 Comp. (1969 P.S.) is set out:

H. determine the qualifications for and issue a certificate to any person teaching, assisting teachers, supervising an instructional program, counseling, providing special instructional services or administering in public schools according to law and according to a system of classification adopted and published by the state board;

The rules and regulations adopted by the New Mexico State Board of Education covering certification of school personnel in New Mexico filed with the State Records Center and Archives on July 2, 1964 outline the specific requirements that have been established for the issuance of teaching certificates. These requirements involve specialized study in educational subjects at approved institutions in the educational field. State of New Mexico, Department of Education, 230 Reg. 8-38. These standards were established by the State Board pursuant to authority granted by section 77-2-1, N.M.S.A., 1953 Comp., and section 77-2-2 H, N.M.S.A., 1953 Comp. and unless JROTC instructors meet these specific requirements, as enumerated in the Department

certification regulation, **supra**, the State Board has no authority to issue such instructors a certificate. Hence it follows that such instructors, who do not have sufficient qualifications to qualify for certification under the certification regulations of the Department of Education, **supra**, cannot acquire tenure rights under the provisions of section 77-8-11, N.M.S.A., 1953 Comp., nor can they acquire retirement rights under the Educational Retirement Act inasmuch as it is impossible for them to meet the requirements of section 77-9-2, N.M.S.A., 1953 Comp.

{*104} Those JROTC instructors who do meet the required standards and are issued appropriate teaching certificates can acquire tenure educational retirement rights under the aforementioned statutes.

Furthermore since section 77-2-2 H, **supra**, indicates that **any** person teaching in the public schools should be certified, we would note that the State Department of Education should consider immediately a new regulation outlining a special form of certifications for JROTC instructors, so that compliance can be made with section 77-2-2 H, **supra**. The new regulation can impose or restrict rights or privileges concerning tenure and (other) retirement benefits in the discretion of the State Board of Education.

By: Frank N. Chavez

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