

Opinion No. 43-4213

January 14, 1943

BY: EDWARD P. CHASE, Attorney General

TO: Mrs. Georgia L. Lusk, Supt. of Public Instruction, Santa Fe, New Mexico

We are in receipt of your letter of January 11, in which you ask whether or not a teacher paid on a 12 months basis, under the form of contract which you have submitted, would be entitled to a prorata share of the three months summer salary in the event he terminated his employment prior to the end of a teaching year.

I have filled in the various blanks of the contract in conformity with your letter. As so filled in, this contract reads in part, as follows:

"Said teacher shall teach in the public schools of said system to which he or she may be assigned, for the term of 9 months, from 1942 to 1943, for the amount of \$ 1200, payable as follows:

\$ 100 on the 31st day of September, 1942. and \$ 100 on the 31st day of each and every month thereafter, to and including the 31st day of August, 1943."

It will be noted that, under the provisions of this contract the Board of Education agrees to pay the teacher a sum certain, \$ 1200, for teaching 9 months. Thus, at the end of 9 months, the teacher has earned the entire \$ 1200; at the end of 4 1/2 months, the teacher has earned \$ 600. However, this contract provides that payment shall be made on a 12 months basis. This does not take away the right to the money earned, but merely postpones the time of payment, so that a teacher will not be without funds during the summer months. This being true, if a teacher were not allowed his prorated share of the three summer months salary, a forfeiture would result.

Forfeitures are not favored by our courts and will not be imposed, unless required by the clear terms of a contract. Under the terms of this contract, a forfeiture is not clearly provided for and so would not be allowed by the courts, especially since this forfeiture would result on a termination of the contract by resignation of the teacher, which right the teacher is specifically given on condition be give a 30 day notice.

It appears to me that the intention, as expressed by the contract, is to merely postpone the payment of a portion of the teacher's salary and not to limit the teacher's salary to the monthly payments he has received at the time he resigns.

That this is the only reasonable construction of this contract will be seen by looking at the results that might ensue if the teacher were not allowed his proportionate share of the summer months salary. If a teacher taught all but one month, he would have earned 8/9 of \$ 1200, or \$ 1060. Yet, if he were not allowed his prorata share, he would receive

only \$ 800. To the same effect if the whole \$ 1200 yearly salary were to be paid at the end of the school year, or in but two payments, it would not be contended that the teacher was entitled to no salary, or only one-half of his salary if he resigned at the end of 8 months. The principle involved is the same.

It is, therefore, my opinion that a teacher who resigns during the school year, upon the giving of proper notice, is entitled to his prorated share of the summer months pay. It is further my opinion that, in the event a teacher did not give the notice required by the contract of his intent to resign, the Board of Education involved could withhold his salary for 30 days immediately preceding the date of resignation, but could not withhold the teacher's prorata share of the summer salary. In conclusion, it appears to me that it would be a good idea for your department to rephrase your teachers' contracts to specifically cover the question asked by your letter.

By ROBERT W. WARD,

Asst. Atty. General