

## Opinion No. 43-4262

March 31, 1943

**BY:** EDWARD P. CHASE, Attorney General

**TO:** Senator John W. Turner, New Mexico State Senate, Santa Fe, New Mexico

You have requested our opinion as to whether or not Senate Bill No. 36 offends against the constitution of this State. This Bill is an Amendment of Section 55-1114 of the 1941 Compilation and provides for the retirement of School Employees after they have reached the age of sixty years when they have been employed in the public schools of this State for at least fifteen years or when they have, regardless of age, served in the public schools of this State for thirty years.

The only three sections of the constitution under which this Bill, if it became a law, could seriously be questioned are in part as follows:

Section 14, Article 9.

"Neither the state, nor any county, school district, or municipality \* \* \* shall \* \* \* make any donation to or in aid of any person \* \* \*."

Section 27, Article 4.

"No law shall be enacted giving any extra compensation to any public officer, servant, agent or contractor after services are rendered or contract made \* \* \*."

Section 31, Article 4.

"No appropriation shall be made for charitable, educational or other benevolent purposes to any person, corporation, association, institution or community, not under the absolute control of the state, \* \* \*."

In the case of State v. Trujillo 129 P. 2d 329, the Supreme Court of New Mexico while refusing the claim of the pensioner therein, since he had been retired before the effective date of Chapter 110 of the Laws of 1941 laid down the rule by which the validity of the pension laws should be tested when it said

"We adopt the theory that there must be some relation between the service and the reward through pension, and some reasonable theory of public benefit accruing by virtue thereof, \* \* \*."

In outlining the public benefit to be derived from the pension of State Officers, the Court said

"It is generally conceded that a judiciously administered pension system is a potent agency in securing and retaining the services of able public civil officers and employees. The reasons for this are so clear and manifest that they need not be particularized. As has often been said, such a pension system is an inducement to enter the service of the State, and for an equally good reason it is an inducement to those who have grown old in the service to step down and make way for the more efficient. Such good reasons suggest themselves to all upon simple reflection."

Since Senate Bill No. 36 is made applicable only to Employees of the Schools and does not cover former employees it is my opinion that this Bill when enacted into law will be constitutional. It was only insofar as Chapter 110 of the Laws of 1941 was made applicable to former employees that the Court in *State v. Trujillo*, supra, held that act to be invalid and since the Court in that case laid down the doctrine by which such statute would be sustained in the light of the three constitutional provisions above cited there can be no question as to the validity of this bill as it is clearly within that rule in that it does not apply to persons not employees upon its effective date.

By ROBERT W. WARD,

Asst. Atty. General