

Opinion No. 43-4312

June 4, 1943

BY: EDWARD P. CHASE, Attorney General

TO: Mrs. Georgia L. Lusk, Supt. of Public Instruction, Department of Education, Santa Fe, New Mexico. Attention: Floyd Santistevan, Assistant Superintendent

You have submitted to this office a fact situation concerning a teacher who has served in the public schools of New Mexico for more than forty years, and who is past sixty years of age, but who has taught only three consecutive years, there having been a gap of two years when such person left the public school system to teach in the Indian Service.

In view of this fact situation, you request an official opinion of this office concerning whether or not such person can qualify for retirement under the laws of the State of New Mexico. It is noted that your question does not involve a fact situation concerning disability retirement, and therefore no such questions are considered or ruled upon.

The specific statute covering this situation is Section 55-1114 (a) of the New Mexico 1941 Compilation which provides:

"(a) When the said teacher, supervisor, custodian, nurse, principal, superintendent or other professional employee is over the age of 60 years and has been employed in the public schools of this state for at least 15 years, of which the **last seven years were served consecutively** and immediately prior to the date of such retirement."

In view of the specific language of this statute, it is my opinion that the teacher you refer to cannot qualify for a pension at present.

Trusting that the foregoing sufficiently answers your inquiry, I remain

By HARRY L. BIGBEE

Asst. Atty. General