

Opinion No. 43-4346

July 28, 1943

BY: EDWARD P. CHASE, Attorney General

TO: Mrs. Georgia L. Lusk, Superintendent of Public Instruction, Department of Education, Santa Fe, New Mexico

In your letter dated July 27, 1943, you enclose a copy of the form of teacher's contract used the past school year, and inquire what changes should be made in the contract to make it conform with House Bill No. 122, being Chapter 60, Laws of 1943.

This law requires the governing Board to serve written notice upon each teacher on or before the closing day of school, stating whether it desires to continue or discontinue the services of such teacher for the ensuing year. The law further provides that notice to discontinue the services of a teacher properly certified, who has served two years in the district, shall specify the procedure for a hearing based upon such notice of discontinuance. The teacher is, thereafter, given the right of appeal to the State Board of Education.

Under this amendment, teachers who have served less than two years in a district may be given notice of discontinuance of their services, and such teachers shall not be entitled to a hearing or to an appeal to the State Board. Failure to give any notice whatever, or to give a notice of discontinuance is a constructive renewal of such employment for the ensuing year so far as the governing board is concerned.

It is also noted that the 1943 law excludes from the benefits of the act teachers holding War Emergency certificates, teachers whose professional qualifications are otherwise below those normally required by the governing boards and teachers employed to fill vacancies due to the previous teacher having entered the military service.

With these changes in the law in mind, I believe it will be necessary for you to have two forms of contracts, one for teachers entitled to the benefits of Chapter 60, Laws of 1943, and one for those excluded from such benefits. As to teachers entitled to the benefits of this law, the contract should be changed so that reference is made to Chapter 60, Laws of 1943, rather than to the 1941 law. Otherwise, I believe the contract is in good form. As to teachers excluded from the benefits of this law, the second paragraph on Page 2 of the contract may be deleted, since the constructive renewal of previous employment is one of the benefits contained in the 1943 law to which the excluded teachers are not entitled.

As to such contracts, the reference to the 1943 law on Page 1 of the contract should also be omitted, leaving only the clause that the contract is subject to the rules and regulations of the State Board, and to the budget as finally approved.

By C. C. McCULLOH

First Asst. Atty. Gen.