

Opinion No. 44-4512

May 15, 1944

BY: EDWARD P. CHASE, Attorney General

TO: Mr. B. W. Jarboe, President, Board of Regents School of Mines, Hobbs, New Mexico

We have your letter of May 13, 1944, wherein you refer us to two types of contracts that the New Mexico School of Mines has entered into with various teachers. You then state that due to the fact that the United States Army cancelled its contract with the School of Mines that you were compelled to automatically give 90 days notice to all teachers that their contracts were being terminated. You further state that it is not the position of the Board that any of the teachers were unsatisfactory or detrimental to the School, but that this action was taken solely because there was no need for the services of the various teachers after the close of the government program.

I first consider what is commonly referred to as your regular type of contract, which contains this clause:

"If this contract remains in force during the period from September 1, 1943 to June 1, 1944, the Party of the Second Part is granted three month's vacation on pay during the summer of 1944."

The last sentence of this contract further provides:

"In case the services of the Party of the Second Part are found to be unsatisfactory and detrimental to the best interests of the School, the Board of Regents may terminate this contract ninety days after giving notice of such intention."

Your letter further discloses that the 90 day period from the beginning of notice will be June 18, 1944. It is then clear that on June 1, 1944 this type of contract will not be terminated and therefore on June 1, 1944 there will be granted three month's vacation on pay during the summer of 1944 to all persons holding this type of contract.

It is further our opinion that since the party of the first part merely let the option to terminate this type of contract when the services of the party of the second part are found to be unsatisfactory and detrimental to the best interest of the School and since your letter states that in no instance is this the case the Board of Regents would not have the power under the facts set forth in your letter to terminate this contract by giving 90 days notice. However, this second question is in fact a moot question because regardless of whether or not the Board had the power to terminate the contract it was not terminated on June 1, and therefore the holders of such contracts are entitled to their three month's vacation pay.

Your letter further called our attention to a different type of contract which has this clause:

"The Party of the First Part may also terminate this contract by giving 90 days notice and their intention so to do, if in their estimation such action is warranted."

The cancellation of the government program was a fact which justified the Board of Regents in determining the cancellation of this type of contract was warranted and therefore the Board of Regents had the power to terminate this contract on 90 days notice.

It is noted that there is no provision for vacation pay in this type of contract and therefore the problem considered in connection with the first contract is not herein discussed.

Hoping the above fully answers your questions, I remain

By HARRY. L. BIGBEE,

Asst. Atty. General