

Opinion No. 44-4540

June 30, 1944

BY: EDWARD P. CHASE, Attorney General

TO: Mr. Floyd Santistevan, Assistant Superintendent of Public Instruction, Department of Education, Santa Fe, New Mexico

We are in receipt of your letter of June 27, 1944, in which you state that a teacher has applied for retirement on the grounds of disability. You further state that her application shows ten years service in the state, but that she did not teach the period between the end of the school term of 1937-38 and the beginning of the school terms 1943-44.

In view of this situation, you ask our opinion as to whether or not she is eligible for retirement.

Section 55-1117 of the 1941 Compilation provides, in part, as follows:

"The Board of Education of any * * * county * * * may retire from service any teacher * * * when such person is totally disabled from continuing in his profession * * * provided that such person has been employed in the public schools of the State of New Mexico for not less than five years."

This section does not contain any requirement as is found in Section 55-1114 of the 1941 Compilation requiring that the service be consecutive or immediately prior to the date of retirement.

It is therefore my opinion that such teacher, if she meets the other requirements, is entitled to retirement, and that the only effect of failing to teach for several years is that such period of time could not be included in determining her years in service.

Trusting that the foregoing sufficiently answers your inquiry, I am

By ROBERT W. WARD,

Asst. Atty. General