

Opinion No. 44-4573

September 7, 1944

BY: C. C. McCULLOH, Attorney General

TO: Mr. Raymond Huff, Chairman, State Board of Education, Santa Fe, New Mexico

You have requested an opinion covering the interpretation of Section 55-1111 of the 1941 Compilation cumulative pocket supplement, being Section 1, Chapter 60, Laws of 1943. You state that the Board of Education gave notice to a teacher that it decided to continue the services of such teacher for the ensuing year without qualifying as to assignment, and you wish to know whether the School Board may now assign said teacher or principal to another school in another district.

Under Section 1, Chapter 202, Laws of 1941 (Section 55-1111 of the 1941 Compilation,) we find this language:

"And provided further, that nothing herein contained shall require any governing board to employ any teacher in any particular school until a written contract is entered into with such teacher."

This proviso was deleted in the 1943 Amendments. In the case of failure to give a notice of discontinuance of service, the 1943 Act provides that this shall be considered as a renewal of such employment, and that not later than ten days before the opening of the next school term, a contract, covering said employment, shall be executed, except that the salary and period of employment may be modified.

In the case entitled Freeman v. Medler, 46 N.M. 384, involving failure to give notice to a principal of a school before the close of a school term, the Supreme Court used this language:

"For the purpose of this case we will assume that the statute is prospective only, but it does not follow that we must give it a retrospective effect to hold that appellant had been employed as the principal of the Arras school for the ensuing year. * * * It did not take away or impair any vested right or create any new obligation or impose any new duty, or in any way affect the rights and duties of the parties with respect to the existing contract."

In view of the 1943 statute and the Supreme Court language in construing the 1941 statute, it seems clear that failure to give notice before the close of the school year results in a renewal of the existing contract in the same school and in the same position. By analogy, the giving of a notice of continuance of services without any qualifications as to assignment, also results in a renewal of the existing contract for the same position in the same school, except that the salary and period of employment may be modified in conformity with the needs of the school and the budget available. Any change in the

assignment would amount to a discharge of employment under the existing contract which would be governed by Section 55-1113 of the 1941 Compilation.