

Opinion No. 45-4638

January 15, 1945

BY: C. C. McCULLOH, Attorney General

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

{*5} We are in receipt of your letter of January 10, 1945 in which you submit a question involving the Teacher Tenure Law, being Chapter 60, Laws of 1943.

While your letter does not specifically set out the facts, I take them to be as follows:

A teacher, having a full certificate from the State Board of Education, was employed by the Colfax County Board of Education. This teacher, while meeting the qualifications and requirements of the State Board of Education, did not meet in full the requirements and qualifications demanded by the Colfax County Board of Education. The teacher, after having taught two years in a particular district, was discharged by the Colfax County Board of Education which relied on the following portion of Chapter 60, Laws of 1943:

"providing further that teachers holding War Emergency Certificates, and teachers whose previous qualifications are otherwise below those normally required by governing boards, shall not be entitled to the benefits specified in this act."

The Legislature, in making this exception to the Teacher Tenure Act, excluded teachers whose qualifications were below those normally required "by governing boards". Thus, it must have had in mind county boards of education and municipal boards of education rather than the State Board of Education, since it refers to "boards" in the plural. Had it intended to include only the qualifications established by the State Board of Education, it would have used the word "board" in the singular, or would have referred to the State Board of Education. Hence, if the County Board of Education has the power to impose qualifications in addition to those required by the State Board of Education, a teacher who does not meet such qualifications is not protected by the Act.

While the State Board of Education is given the power to determine the qualifications of teachers and to issue teachers' certificates by Sec. 55-105 of the 1941 Compilation, and the county boards of education are not specifically given this power, yet the county boards, by Sec. 55-807 of the 1941 Compilation are given "the power to employ and discharge all teachers and all employees of said school subject to the limitations herein otherwise provided".

Inasmuch as county boards can refuse to hire a teacher even though he holds a full teaching certificate issued by the State Board of Education, and is fully qualified according to the standard set by the State Board of Education, they can establish qualifications in addition to those established by the State Board by refusing to hire any

teacher unless he meets the qualifications so established. Thus, while the County Board of Education would have no power to reduce the qualifications established by the State Board, it does in fact have the power to increase those qualifications.

In view of the foregoing, it is my opinion that a teacher who does not meet the qualifications normally required by county boards of education, is not protected by the Teacher Tenure Act, even though he fully meets the qualifications established by the State Board of Education.

One further question presents itself: How can the State Board of Education determine what qualifications have been established by the County Board? Certainly, the State Board of Education must look beyond the particular qualifications required of a particular teacher and look to those that are normally required of teachers holding the same or similar positions. The Board may {*6} look to a resolution which is followed by the Board, or may look to the County Board's normal practice. One thing further, the State Board of Education may look behind a regulation of a county board to determine whether or not such regulation is merely a subterfuge to defeat the Teacher Tenure Law. Thus, if the County Board of Education, by by-law, requires all teachers to hold Ph. D. degrees, and then gives the teachers hired a contract stating that they held sub-standard qualifications, merely for the purpose of defeating the Teacher Tenure Act, the State Board of Education would be fully authorized to determine that such by-law was merely a subterfuge.

By ROBERT W. WARD,

Asst. Atty. General