

Opinion No. 45-4713

May 11, 1945

BY: C. C. McCULLOH, Attorney General

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

{*64} I have your letter of May 3, 1945, wherein you request an opinion concerning the interpretation of Subsection (a) of Section 1 of House Bill No. 72, which will appear as Chapter 50 of the Laws of 1945, the same being an act relating to the pensions of teachers and certain other persons. Your two questions are:

1. How long does a person who has worked 30 years in the public schools have to be temporarily re-employed in order to qualify for retirement?
2. If a person has taught 30 years, does such person have to be 60 years of age in order to qualify for retirement?

Subsection (a) of Section 1 of the above mentioned provision, which is an amendment to Section 55-1114 of the 1941 Compilation, provides in part as follows:

"When the said teacher * * * who is over the age of sixty (60) years, and has been employed in the public schools * * * of this state for at least fifteen (15) years, said person may be retired. Provided that in either case, that half credit may be given for not more than ten (10) years of educational service in other states prior to serving in New Mexico, and that full time credit may be given to all persons with prior educational service in New Mexico for time served in the armed forces {*65} of the United States who reenter educational service in this state after honorable discharge from the armed service of the United States. In every case not less than fifteen (15) years of educational service in New Mexico is required, of which the last five (5) years were educational service in New Mexico consecutively and immediately prior to the date of such retirement; **provided, that any person who has been employed in any of said services in New Mexico for more than thirty (30) years, although such employment may have been in more than one of such services, shall be temporarily re-employed and retired under the provisions of this bill, notwithstanding any requirement that such person shall have served five (5) years consecutively and immediately prior to his or her retirement.**"

In answer to your first question, it is noted that the proviso included in Subsection (a) quoted above, such proviso being underlined for convenience, does not specify a length of time that a teacher should be temporarily re-employed prior to being pensioned. Since no time is specified, upon the re-hiring of any person who has more than 30 years

service, such person immediately becomes eligible for retirement and may be retired at any time.

In answer to your second question, I call your attention to the last portion of the proviso which states:

"Notwithstanding any requirement that such person shall have served five (5) years consecutively and immediately prior to his or her retirement."

If the proviso had intended to allow a person who otherwise comes within the act to be retired prior to reaching the age of 60 years, when such person had 30 years service, such intention would undoubtedly have been made clear in this portion of the proviso which specifically referred to the one requirement of five years consecutive service, but omitted any reference to the age of the person to be retired.

In view of the foregoing, it is my opinion that the proviso involved is only material in connection with waiving of the requirement of five years consecutive service immediately prior to a person's retirement and does not affect the additional requirement that a person otherwise eligible for retirement must be over the age of sixty.

By HARRY L. BIGBEE,

Asst. Atty. General