

Opinion No. 45-4704

April 28, 1945

BY: C. C. McCULLOH, Attorney General

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

{*58} I have held your letter of April 9, 1945, together with the letter from Emily G. Long, Colfax County Superintendent, until I obtained a copy of Chapter 50 of the Laws of 1945. In Mrs. Long's letter she states that it has been the practice to pay the teachers of one and two room schools an additional \$ 5.00 or \$ 10.00 per month for janitorial services, and she asks whether this sum can be counted as salary in reckoning retirement.

Under the present law, Section 55-1114 provides retirement only for "any teacher, supervisor, custodian, nurse, principal, superintendent, or other professional employee." That being so, the words "salary paid to him on account of his employment", found in Section 55-1115, do not cover janitorial services. In view of the foregoing, it is my opinion that a teacher retired under the present law would not be entitled to have the additional sum paid for janitorial services considered in reckoning retirement.

Under Chapter 50, however, in addition to the persons heretofore named, as being entitled to retirement, provision is made for "other legal full-time employees of the public schools." If a janitor worked full-time for the prescribed length of time, he would be entitled to retirement. This being so, it is my opinion that the sum paid to a teacher for janitorial services should be included in reckoning his salary for retirement purposes.

By ROBERT W. WARD,

Asst. Atty. General