

Opinion No. 45-4715

May 16, 1945

BY: C. C. McCULLOH, Attorney General

TO: Hon. Phillip M. Ludi Member, House of Representatives Las Vegas, New Mexico

{*67} I have your letter of May 12, 1945 wherein you request, as a member of the State Legislature, the construction of the amendment to the Teacher Tenure Law, which is a Committee Substitute for Senate Bill 116 and will appear as Chap. 125, Laws of 1945.

Chap. 125, Laws of 1945, limits the benefits of the Teacher Tenure Law to classroom teachers. The question raised is whether or not a school principal who does part-time teaching in a classroom may be classified as a classroom teacher.

The question of the construction of the word "teacher" was raised in the case of Ortega vs. Otero, 48 N.M. 588. The only change material to this inquiry involved in the present statute concerns the use of the word "classroom". In the case above mentioned our Supreme Court stated:

"Our conclusion from all of the foregoing is that a rural school supervisor is a person employed for instructional purposes and is a teacher who is entrusted with special duties of supervising public instruction in the schools, which embraces counsel and instruction of other teachers in the matter of classroom instruction, as well as personal professional contact with and instruction of pupils, and hence has a teacher's status under the provisions of the 1941 Comp. Sec. 55-1113."

It would appear that the only distinction between a teacher and a classroom teacher is that a classroom teacher must teach classes in a classroom. Therefore, if the duties of a principal are solely of an administrative character and do not involve any classroom teaching, the principal would not be entitled to the benefits of the Teacher Tenure Law. However, if the duties of such principal also involve actual teaching in a classroom, such principal would, in the opinion of this office, be a classroom teacher, entitled to all the benefits of Chap. 125, Laws of 1945.

You further inquire concerning any retroactive features of the new law. Chap. 125, Laws of 1945 does not go into effect until July 10, 1945. Prior to that date, the present act will be in full force and effect. After that date, the sole question will be in determining whether a teacher is entitled to the benefits of the act, and whether or not such teacher has served the probationary period of three years and holds a contract for the completion of the fourth year in a particular district. It is immaterial whether or not this probationary period be served before or after the enactment of Chap. 125, Laws of 1945, and such period may be served partially before and partially after, the sole question being whether or not a teacher has served the required probationary period

and holds a fourth contract, and {^68} upon a teacher having served this period he is entitled to the benefits and protections of Chap. 125, Laws of 1945.

By HARRY L. BIGBEE,

Asst. Atty. General