

Opinion No. 45-4762

July 24, 1945

BY: C. C. McCULLOH, Attorney General

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

{*112} We are in receipt of your letter of July 20, 1945 and the enclosed letters from Mr. W. G. Donley, Superintendent of Schools at Hobbs. From his letter it appears that on May 8 the Hobbs Board of Education notified one of its teachers that he had been elected to be employed for the coming year at a stated salary. The teacher wrote back that he had received notice of re-election but had decided not to accept the offer. Noted on the bottom of the teacher's letter is the statement that he would sign a contract for a greater amount than that set forth in the Board of Education's notification.

This teacher now desires to accept the position previously offered and asserts that the board of education must re-employ him in view of the fact that he has qualified under the teacher tenure act.

In view of this situation, you ask our opinion as to whether or not the teacher tenure act, being Section 55-1111 of the 1941 Compilation (the amendment to the tenure act made by the 1945 Legislature did not become effective until July 8, 1945, and so has no bearing on the case involved) makes it mandatory on a school board to re-employ a teacher who has previously rejected an offer to teach.

I will not consider the situation where the salary offered is less than the teacher previously received, or where an increase in salary commensurate with the increases given other teachers in the system is not offered, since such situations are not involved here.

Without the aid of statute, in order to have employment, a teacher must have a contract with a school board, that is to say, an offer of employment must be made by the school board and accepted by the teacher. The only statute which would have any bearing is Section 55-1111, as amended, which requires giving of notice by a school board stating whether it desires to continue or discontinue the services of a teacher. The statute then goes on to say, and I quote:

"Failure to serve such notice shall be construed as renewal of such contract for the ensuing year unless within 15 days after the closing date of school, within the district, such employee shall serve such written notice upon the governing authority that he or she does not desire such contract to be renewed."

In the first place, it appears to me that the teacher's notification that he had decided not to accept the offer of employment would amount to written notice that he did not desire

such contract to be renewed. In the second place, it is apparent that the above quoted statute was enacted solely for the protection of the teacher. It further appears that the re-employment clause is effective only in the event no notice is served within the prescribed time. In the situation presented by you, a notice in the form of an offer of re-employment was served. This offer was rejected and so the teacher involved cannot bring himself within the protection of the statute.

{*113} In view of the foregoing, it is my opinion that the Hobbs School Board is not required to re-employ this teacher. I am enclosing herewith copies of the letters which you sent to me.

Trusting the foregoing sufficiently answers your inquiry, I am

By ROBERT W. WARD,

Asst. Atty. General