

Opinion No. 45-4794

September 21, 1945

BY: C. C. McCULLOH, Attorney General

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

{*135} We are in receipt of your letter of September 18, 1945, in which you set forth the following facts:

"The New Mexico School for the Deaf has, in computing the retirement salary of Margaretta E. Reed, combined total cash salaries for the past five years, and maintenance at \$ 25.00 per month for five years, as follows:

"Cash salary 1940-41 \$ 900.00

"Cash salary 1941-42 900.00

"Cash salary 1942-43 900.00

"Cash salary 1943-44 900.00

"Cash salary 1944-45 1080.00

Total \$ 4680.00

Maintenance at \$ 25. per month for 5 yrs. 1500.00

Combined total for five years \$ 6180.00

Five year average 1236.00

Sixty per cent of average salary 741.60

Average monthly salary 61.80"

In view of these facts, you ask our opinion as to whether the \$ 25.00 per month item of maintenance should be included in the annual salary of the teacher for the purpose of determining retirement pay under Chapter 50, Laws of 1945.

I have contacted the New Mexico School for the Deaf, and find that no separate item is kept on the books of the school equivalent to the \$ 25.00 per month figure shown in your schedule. Rather, their budget is set up, in general figures, for food, lights, water, etc. Thus, the \$ 25.00 figure is a figure arbitrarily arrived at by the School board, and is not set upon the books, or paid to the teacher as salary.

Turning now to Chapter 50, your attention is called to Section 2, which provides, in part, as follows:

" * * * He shall be entitled to receive annually for the remainder of his natural life, and beginning on the date of such retirement, 60% of the average annual **salary paid to him** on account of his employment, during the last five years. * * *"

{*136} A teacher receiving board and room at the school for the Deaf, in addition to his salary, does, in fact receive a benefit. This, however, is not salary paid to him. The situation is much the same as prevails with respect to insurance premiums paid, in part, by various school systems on behalf of their teachers. It is a benefit to the teacher, but is not salary paid to him. Both the item of insurance, and the various items in the maintenance budget of the School for the Deaf are paid to other persons than the teacher.

In view of the foregoing, it is my opinion that the \$ 25.00 item set up by the School for the Deaf as maintenance allowance, should not be included in the computation of retirement pay.

I realize the fact that this result is slightly incongruous, in that the School for the Deaf could easily change its bookkeeping system so that it would pay the teacher this additional amount as salary, and then require the teacher to pay the School for board and room, in which event it could be included as part of his salary. However, it appears to me that the language of the Legislature is clear.

By ROBERT W. WARD,

Asst. Atty. General