

**Opinion No. 46-4859**

February 23, 1946

**BY:** C. C. McCULLOH, Attorney General

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

{\*192} We are in receipt of your letter of February 4, 1946, in which you state that the public schools in Santa Rosa employed a teacher three years ago; that such teacher is now 63 years of age. The problem the board is now confronted with is that if such teacher is given a contract next year, she will have acquired permanent tenure and would not be subject to retirement until she is 75.

I have examined the teacher tenure act with care and do not find any limitation on the rights of a teacher who has acquired tenure, no matter how old.

It is therefore my opinion that the mere age of a teacher would not take from her the rights given by the teacher tenure act.

However, age itself might be cause for refusal to renew the contract. Further, the retirement for disability could be invoked before the fifteen years were up.

By ROBERT W. WARD,

Asst. Atty. General