

Opinion No. 47-5039

June 12, 1947

BY: C. C. McCULLOH, Attorney General

TO: Floyd Santistevan, Director Teacher Retirement Department of Education Santa Fe, New Mexico

{*59} We are in receipt of your letter of June 9, in which you state the following:

"Dr. T. H. Schutte, age 63, New Mexico State Teachers College, Silver City, has submitted an application for age retirement. The application is being submitted on the basis of ten years of service in New Mexico and twenty-five years of school work in other states. All of the out-of-state service is prior to any New Mexico work. His service for the last five years is consecutive."

In view of this situation you ask our opinion as to whether you may allow five years credit for out-of-state service in order to bring up the total service to fifteen years so that Dr. Schutte may qualify for retirement under Chapter 50 of the Laws of 1945.

Section 1 (a), insofar as is material, is as follows:

"When the said teacher, supervisor, custodian, nurse, principal, superintendent, other regular full time employee of the public schools or any regular full time employee of the aforesaid state institutions, or said departments and boards, who is over the age of sixty (60) years, and has been employed in the public schools, or in said institutions or departments, or in a combination of such services, of this state for at least fifteen (15) years, said person may be retired. **(Provided that in either case, that half credit may be given for not more than ten (10) years of educational service in other states prior to serving in New Mexico)** and that full time credit may be given to all persons with prior educational service in New Mexico for time served in the armed forces of the United States. In every case not less than fifteen (15) years of educational service in New Mexico is required, of which the last five (5) years were educational service in New Mexico consecutively and immediately prior to the date of such retirement . . ."

On the face of this statute it might appear that there is some slight ambiguity because of the clause "In every case not less than fifteen years of educational service in New Mexico is required". However, it appears from the proviso underlined above that in ascertaining whether the employee has had fifteen years service in New Mexico, one-half time credit for service in other states is allowed and is allowed as service in New Mexico.

It is therefore my opinion that Dr. Schutte is entitled to retirement since he has had fifteen years educational service in New Mexico within the contemplation of the Act.

By ROBT. W. WARD,

Asst. Atty. General