

## Opinion No. 53-5749

May 6, 1953

**BY:** RICHARD H. ROBINSON, Attorney General

**TO:** Mr. Floyd Santistevan, Assistant Superintendent of Public Instruction Department of Education Santa Fe, New Mexico

{\*150} In your letter of April 23, 1953, you ask our opinion as to whether or not the Teacher Tenure Law (§ 55-1111, 1941 Comp., P.S.) prohibits a school district from decreasing the salaries of teachers who are covered by the Teacher Tenure Law. The Teacher Tenure Law prohibits the dismissal of certain teachers without cause and only after hearing. Similar laws are in force in many other states. Although the question presented has never been before our courts the courts of other states have uniformly ruled that the provisions of teacher tenure laws do not prohibit the decrease of teachers' salaries in the absence of some showing that the decrease is unreasonable. It is stated, in 47 Am. Jur., Schools, § 135:

"The permanency of tenure given by the legislature to teachers carries with it no assurance against changes in salary. Therefore, when the duty of fixing teachers' salaries is imposed upon school boards, their power to reduce the salaries of permanent teachers cannot be doubted, provided it is reasonably exercised and no attempt is made after the beginning of the school year to reduce salaries for that year. In this respect, a discretion rests upon the board, the exercise of which, short of the limitations just pointed out, is not subject to judicial review."

The provision of § 55-1111 which reads ". . . In the event the compensation allowed teachers of like qualifications and experience is reduced, such teacher shall have the right to determine employment for the following year" indicates that the Legislature of this State did not intend to prohibit school boards from decreasing the salaries of tenure teachers.

In the particular situation in your request the school district involved has been paying male teachers \$ 240.00 per year in addition to their regular salary and wishes to eliminate this increment in order to equalize the salaries between men and women teachers. The only prohibition against such a decrease is if such action can be considered unreasonable. Since the original action of the Board in paying men more than women was discriminatory and the contemplated action of the Board of Education only results in the elimination of this discrimination we cannot say that it is an unreasonable action.

It should also be stated that in accordance with the rule above quoted in American Jurisprudence, the reduction in salaries must be made prior to the beginning of the school year, and no attempt should be made to reduce salaries for a current year after

contracts have been signed, at least, where sufficient funds are available to meet the salaries specified in the contracts.

By: W. R. Kegel

Assist. Attorney General