

Opinion No. 53-5736

April 17, 1953

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. Floyd Santistevan Director of Teacher Retirement Santa Fe, New Mexico

{*133} In your letter dated April 14, 1953, you request an opinion concerning retirement of a teacher who has tenure protection where the teacher does not wish to retire voluntarily. Section 55-1111 of the 1941 Compilation, Pocket Supplement, provides in part as follows:

"Notice to discontinue the service of such classroom teacher properly certified and who has served a probationary period of three (3) consecutive years and holds a contract for the completion of a fourth consecutive year {*134} in a particular district shall specify a place and date not less than five (5) days nor more than ten (10) days from the date of mailing such notice at which time said teacher may at his or her discretion appear before the board for the hearing. * * *"

Section 55-114 of the 1941 Compilation, Pocket Supplement, provides in part as follows:

"The Board of Education of any municipality * * * shall, upon request of any employee entitled to the benefits of this act, or in the absence of such request may, but in any event with the approval of the state retirement board, retire from active service and establish an emeritus employment status with any teacher. * * *"

The Teacher Retirement Act was originally passed in 1937 and the Teacher Tenure Act was originally passed in 1941. The subsequent amendments of each of the acts are not such as to constitute new acts, but would merely be considered continuations of the original acts or sections thereof involved. It is thus apparent that the Tenure Act was passed and should be considered as being passed in contemplation of a previous retirement act and the two acts should be construed together. When a teacher is retired he or she is placed in an emeritus employment status and is not being discharged from employment, therefore, the provisions in the tenure law for a hearing in connection with a discharge of a teacher would not conflict with the retirement of such a teacher who is qualified therefor whether the same is voluntary or enforced.

It is therefore the opinion of this office that a teacher who is qualified for retirement and who does not wish to retire voluntarily may be retired by the local board with the approval of the State Retirement Board without violating the provisions of the Teacher Tenure Law.

By: C. C. McCulloh

Assist. Attorney General