

Opinion No. 53-5802

August 20, 1953

BY: RICHARD H. ROBINSON, Attorney General

TO: Honorable Paul Tackett District Attorney Second Judicial District Albuquerque, New Mexico

{*209} In your letter dated August 7, {*210} 1953, you have enclosed copies of correspondence and additional information setting forth specific facts and request that we supplement our opinion dated August 3, 1953, being Opinion No. 5794, in view of the additional facts concerning an individual case.

This matter concerns Solomon Montoya, who was under the Teacher Tenure Act this past year teaching in the schools of Sandoval County, School District No. 2. The County Board of Education, prior to the closing day of school, gave him notice of re-employment but the placement was not in the same School District. He objected to being transferred to another School District and obtained the services of an attorney who wrote three letters to the County Board of Education objecting to the transfer and seeking a hearing before the Board on the matter. These letters were dated May 23, 1953, May 28, 1953 and June 4, 1953. No hearing was granted by the County Board but on June 8, 1953, the matter was heard by the State Board of Education, and the State Board ruled that the notice of placement given Mr. Montoya was void because it did not designate the school offered him and that he was automatically employed in his present position for the ensuing year as he had been contending for with the County Board and with the State Board. Under such circumstances, acting upon advice of his attorney, Mr. Montoya did not think it necessary to give the notice of acceptance of such employment to the County Board as provided for in Section 55-1111 of the 1941 Compilation, p.s.

This notice would seem to be for the benefit of the School Board in employing replacement teachers in case of rejection or in filling out the necessary number of teachers required in case of acceptance. Since in this particular case Mr. Montoya through his attorney, wrote the Board on three occasions of his desire to continue in his present position and school, and vigorously presented the matter to the State Board of Education, it seems that the purpose of the Act was complied with and no further notice of acceptance would be necessary in order to advise the County Board of his intention to accept and retain the position.

In view of this conclusion, the last paragraph of our previous opinion would not apply to this particular state of facts.

By: C. C. McCulloh

Assist. Attorney General