

Opinion No. 54-5945

May 7, 1954

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. Floyd Santistevan Asst. Supt. of Public Instruction State Capitol Building Santa Fe, New Mexico

{*398} In your letter of April 19, 1954, you request the opinion of this office as to the validity of the following provision in a teacher's contract:

"Teachers who withdraw or resign during the regular nine (9) month school year for reasons other than personnel illness will forfeit all summer pay."

Section 55-112, 1941 Comp., provides:

"Form of employment contract. -- All contracts for employees, other than those not required to have teaching certificates, shall be on forms approved by the state board of education, containing and specifying the term of service, the salary to be paid, the causes for the termination of the contract, and such other provisions as may be lawfully required by the state board of education."

An inspection of the form of employment contract approved by the State Board of Education discloses that such contract does not contain the clause above quoted or any similar clause.

Inasmuch as under § 55-1112 such a clause to be legal would require the prior approval of the State Board of Education, it is the opinion of this office that the clause is not legal and cannot lawfully be inserted in any teacher's contract, unless the State Board of Education approves its use, and that such approval could not be retroactive.

By: Walter R. Kegel

Assist. Attorney General