

Opinion No. 54-6040

November 15, 1954

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. Richard C. Grandi Business Manager New Mexico Western College Silver City, New Mexico

{*509} You have requested the opinion of this office as to whether or not paragraph 4, Section 12, Chapter 227 (Section 7-624 (n) N.M.S.A., 1941) of the Session Laws of 1951, applies to employees of public schools.

That paragraph provides:

"The restrictions as to residence provided for in any law shall not apply to employees of State educational or other institutions, and State departments for positions in which professional training is required and for which qualified prospective employees are not available, all or part of whose salary is paid from appropriations made herein."

You state that the question has arisen as to whether or not public {*510} school teachers who are not residents of New Mexico are entitled to enroll at your Institution for graduate work, without paying nonresident tuition.

First, it is our opinion that paragraph 4 was intended to apply to residence requirements for public employees, which are set forth in Section 10-105, N.M.S.A., 1941, as follows:

"Hereafter all employees of the State of New Mexico, including all political subdivisions thereof and including all of the departments, bureaus, boards, commissions and institutions in said state, and all of its political subdivisions, shall be residents of the State of New Mexico, having resided in this State for a period of at least one (1) year prior to the commencement of their employment . . ."

We believe that the purpose of paragraph 4 was to permit the hiring by State Educational Institutions, and by State Agencies requiring employees with specialized professional training, of nonresidents of New Mexico, and that it was not intended to have application to the payment of resident or nonresident tuition at State Educational Institutions.

Second, it is our opinion that even if paragraph 4 had been intended to apply to the matter of the payment of tuition, that employees of public schools could not be deemed to be employees of "State educational or other institutions," nor of "State departments."

The State Educational Institutions of New Mexico were created by the Constitution, and are set out therein in Article 12, Section 11:

"The University of New Mexico at Albuquerque, the New Mexico College of Agriculture and Mechanic Arts near Las Cruces, the New Mexico School of Mines at Socorro, the New Mexico Military Institute at Roswell, the New Mexico Normal University at Las Vegas, the New Mexico Normal School at Silver City, the Spanish-American School at El Rito, the New Mexico Asylum for the Deaf and Dumb at Santa Fe, and the New Mexico Institute for the Blind at Alamogordo, are hereby confirmed as state educational institutions."

You will note that public schools are not included as such "State educational institutions." In fact, public schools are not State Agencies at all, but rather municipal or county agencies.

We believe that the "other institutions" referred to by paragraph 4 are such institutions as the New Mexico Insane Asylum at Las Vegas, the Carrie Tingley Hospital at Truth or Consequences, and other institutions of that nature.

The "State departments" referred to by that paragraph are, of course, state governmental departments which have need for specially trained professional personnel.

Thus, it is our opinion that nonresident teachers in the public schools of New Mexico are not entitled to attend our State Educational Institutions without paying nonresident tuition.

Trusting that the foregoing will answer your question satisfactorily, I am

By: Henry A. Kiker, Jr.

Assist. Attorney General