

Opinion No. 55-6100

February 8, 1955

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. Floyd Santistevan, Director, State Education Retirement, Santa Fe, New Mexico

In your letter of February 4, 1955 you enclosed a letter from the Superintendent of Schools at Los Alamos and requested our opinion concerning the questions raised.

The first question is relative to persons teaching at Los Alamos between 1943 and 1949 when Los Alamos became a sixth class county of New Mexico. Many of these teachers served in New Mexico prior to 1943 and have been teaching subsequent to 1949. You inquire whether they are entitled to credit for retirement for the teaching service between 1943 and 1949 at Los Alamos.

§ 73-12-16(a), insofar as the same pertains to this question, provides as follows:

"Provided that in either case, half credit may be given for not more than ten (10) years of educational service in other states, territories and possessions of the United States prior to serving in New Mexico, to any contract teacher, and education system employee covered hereunder, ****."

Between the years 1943 to 1949, the United States had exclusive jurisdiction over the territory now known as Los Alamos County and any teaching service during such period would not constitute teaching in New Mexico but would constitute teaching in a territory or possession of the United States. *Arledge vs. Mabry*, 52 NM 303, 197 P 2d 884; *Chaney vs. Chaney*, 53 NM 66, 201 P 2d 782.

In view of the statute and these Supreme Court decisions relative to Los Alamos, it is our opinion that only half credit may be given to persons teaching in Los Alamos during the period involved.

Your second question is whether kindergarten teachers in the Los Alamos schools are eligible for retirement on the same basis as any other public school employee. Under the provision of the abovementioned section, all teachers, regardless of the grades taught, in Los Alamos are eligible for retirement on the same basis.

By C. C. McCulloh

Assistant Attorney General