

Opinion No. 55-6118

February 28, 1955

BY: RICHARD H. ROBINSON, Attorney General

TO: Floyd Santistevan, Director, State Educational Retirement Board, State of New Mexico, Santa Fe, New Mexico

In your letter dated February 18, 1955 you refer to an application for retirement submitted by Mr. J. H. Whorton, who was a school bus driver for the Quay County Board of Education up until June 30, 1948. Mr. Whorton apparently is eligible by reason of age to retirement, but since his application was not filed until September 1954 he has not met the requirement of five years of consecutive service immediately prior to the date of retirement as required by law. In this connection, please refer to our Opinion No. 5893 written to you on January 22, 1954 relative to Stella Sullivan.

The County School Superintendent states that at the present time Mr. Whorton is employed as a janitor in the House school but that he is eligible for disability retirement. The fact that he is presently employed by the School Board would tend to negative his eligibility for disability retirement. However, if in fact he is totally disabled and makes application within six months from the date of expiration of his last contract, pursuant to § 73-12-19 of the 1953 Compilation, disability retirement could be granted to him, if the Retirement Board is satisfied from the evidence that he is at the time of his application totally disabled. Mr. Whorton would have to be totally disabled from performing services in the employ of the school board whether such services be as a school bus driver or janitor. There is no requirement under the disability statute that the service be for five years consecutively and immediately prior to the date of retirement.

By C. C. McCulloh

Assistant Attorney General