

Opinion No. 55-6189

June 10, 1955

BY: RICHARD H. ROBINSON, Attorney General

TO: Mrs. Georgia L. Lusk, Superintendent of Public Instruction, State Capitol Building, Santa Fe, New Mexico

Replying to your letter of June 1 in which you ask the following questions:

1. Can the State Board of Education legally determine qualifications of a person desiring to teach in the Public Schools of New Mexico either in the elementary or high school categories who is not a citizen of the United States, but has been educated in the United States and is married to an American?
2. If the above question is answered in the affirmative can the State Board of Education then certificate such a person according to law?

we render the following opinion:

Section 73-1-7, Part 2, N.M.S.A., 1953 Compilation, reads as follows:

"(e) To determine qualifications of persons teaching or desiring to teach school in any of the public, elementary and high schools of the state and to that end promulgate, from time to time, a system of classification of teachers.

(f) To certificate teachers according to law and the prescribed classification of said board, and at its discretion to issue temporary teaching certificates in the interim of examinations, but in no case shall a person under the age of 18 years be certificated."

In view of the above sections, it is our opinion that the State Board of Education could issue a certificate to a person not a citizen of the United States to serve as teacher in the public schools of New Mexico.

We find nothing in the Constitution or other laws which prescribe the qualifications for teachers. We call your attention to Attorney General's Opinion No. 4483, 1943-1944, which, in effect, states that it is the duty of the State Board of Education to prescribe the qualifications for teachers under this section. We are enclosing a copy of this opinion. Of course, the State Board of Education could provide that one of the qualifications for a teacher in the State of New Mexico is citizenship of the United States.

We call your attention to the fact that local school boards may be unable to employ an alien teacher even after you have issued a certificate because of Section 5-1-5, New Mexico Statutes 1953 Annotated. This office has rendered Opinion No. 6161, copy of which we are enclosing, interpreting this particular section of the New Mexico statutes.

Trusting this will answer your questions, we remain

By Paul L. Billhymer

Assistant Attorney General