

## Opinion No. 55-6198

June 17, 1955

**BY:** RICHARD H. ROBINSON, Attorney General

**TO:** Honorable Albert Amador, Jr., State Representative, Tierra Amarilla, New Mexico

Receipt is acknowledged of your letter dated June 6, 1955 in which you request an opinion on the following:

"Can an owner-driver of a school bus hire a substitute driver for any length of time and consider that time for retirement purposes?"

Section 73-12-31, N.M.S.A., 1953 reads as follows:

"Every school bus owner-driver employed pursuant to the provisions of section 55-1802, N.M.S.A., 1941 as amended (73-19-2) who shall have driven a school bus, owned by him, over a regularly established route for a period of 20 years or more, provided the last 5 years are consecutive, under a salary or contract approved by the state transportation director, may be retired in the same manner and under the same terms and conditions as any other employee of the public schools, Provided, however, that owner-drivers shall receive monthly sixty per cent (60%) of the average salary portion of the contract for the last five (5) years prior to retirement or a minimum of seventy-five dollars (\$ 75.00) whichever is the greater."

Chapter 51 of the New Mexico Session Laws of 1955 reads as follows:

"Every school bus **owner-driver** employed pursuant to the provisions of Section 55-1802, New Mexico Statutes Annotated, 1941, 73-19-2 New Mexico Statutes Annotated, 1953 Compilation as amended, **who shall have driven a school bus owned by him**, over a regularly established route for a period of twenty-years or more, provided the last five years are consecutive, under a salary or contract approved by the state transportation director, may be retired in the same manner and under the same terms and conditions as any other employee of the public schools, Provided, however, that owner-drivers shall receive monthly sixty per cent of the average salary portion of the contract for the last five years prior to retirement or a minimum of one hundred dollars (\$ 100.00) whichever is the greater." (Emphasis supplied)

You will note that the language of both of these sections is mandatory and specifically states that every school bus owner driver who shall have driven a school bus owned by him, over a regularly established route, for over a period of 20 years or more, provided the last five years are consecutive, under a salary or contract approved by the State School Transportation Director, may be retired.

I do not believe that it was the intention of the Legislature to give a bus driver owner credit for a period of time in which a substitute was driving for him. If the intention of the Legislature had been to give a bus driver credit for the time earned by a substitute he would be permitted to be retired by merely being the owner, in the face of the statute requiring the annuitant to be the owner and driver.

It is therefore the opinion of this office that an owner driver of a school bus who hires a substitute driver for a length of time cannot be given credit for retirement purposes for the time that the substitute is driving the bus for him.

Trusting that this fully answers your inquiry, I remain

By: Hilario Rubio

Assistant Attorney General