

Opinion No. 57-66

April 3, 1957

BY: OPINION OF FRED M. STANDLEY, Attorney General Robert F. Pyatt, Assistant Attorney General

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

QUESTIONS

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Can five years out-of-state credit toward retirement be allowed a janitor who was continuously employed in the public schools of Parsons, Kansas, from 1935 to and including 1945? Immediately thereafter this same man was employed as a janitor at Eastern New Mexico University from 1945 to and including 1956.

CONCLUSION

Yes.

OPINION

ANALYSIS

The employment record of the subject employee shows him to have been employed for twelve months a year for ten years at Parsons, Kansas, in the public schools therein. Immediately thereafter, his employment record discloses employment at Eastern New Mexico University for eleven years, twelve months a year. All employment was in the capacity of janitor.

Employees of Eastern New Mexico Normal (or Eastern New Mexico University) are among those eligible for teacher retirement if otherwise qualified. § 73-12-16, N.M.S.A., 1953 Compilation. Custodians are among the employees set out in this Statute. It is our opinion that janitors are clearly included in this category.

Turning to the matter of out-of-state service, we find § 73-12-16 (a) reads as follows:

"Any such person who is over the age of sixty (60) years, and who has been employed in the public schools, or by said institutions, boards, or offices, or in a combination of such services, of this state for at least fifteen (15) years, may be retired 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, if regularly employed in New Mexico prior to the passage of this act, and full time credit may be given to all persons with prior educational service in New Mexico for time served in the armed forces of the United States who re-enter educational service in this state after honorable discharge therefrom. Provided that in every case not less than fifteen (15) years of educational service in New Mexico shall be required, of which the last five (5) years were service in New Mexico consecutively and immediately prior to the date of such retirement. Provided, further, that any person who has been employed in any of said services in New Mexico for more than thirty (30) years, although such employment may have been in more than one of such services, shall be temporarily reemployed and retired under the provisions of this act, notwithstanding any requirement that such persons shall have served five years consecutively and immediately prior to his or her retirement, and notwithstanding any requirement that such persons be over the age of sixty (60) years."

At first blush there is some ambiguity in this Statute because of the language

". . . . in every case not less than fifteen (15) years of educational service in New Mexico shall be required"

However, in Opinion of the Attorney General No. 5039, dated June 12, 1947, it was held that one-half time for out-state service is allowable in computing this fifteen year requirement. Hence, the man in question must be allowed five years credit (one-half the time of his service in Parsons, of ten years) toward retirement.

It has been held that one must have had a contract or have been regularly employed in New Mexico prior to June 13, 1953 (the effective date of the 1953 Act) in order to receive credit for out-of-state employment. Opinion of the Attorney General No. 5953, dated May 21, 1954. The employment record here shows that such requirement has been satisfied. Furthermore, the requirement that ". . . the last five (5) years were service in New Mexico consecutively . . ." has been satisfied as of this date.