

Opinion No. 58-123

June 12, 1958

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

TO: Honorable Fred W. Foster, House of Representatives, Grant County, Mangus Route, Silver City, New Mexico

QUESTION

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May a governing board retire a teacher, who has tenure, at the board's discretion, when the teacher has reached the age of sixty?

CONCLUSION

The local administrative unit may make application for the teacher's retirement on the latter's behalf, despite his wishes.

OPINION

ANALYSIS

The question propounded by you has been the subject of an opinion of this office, but because of enactment of the Educational Retirement Act of 1957, careful attention must be paid the later enactment, viewing the prior opinion in that light.

In Opinion of the Attorney General No. 5736, dated April 17, 1953, a like question was at issue. This office pointed out how under the then Teachers' Retirement Act a teacher could be retired and placed on **emeritus employment status**, and consequently the provisions in the Teacher Tenure Act for a hearing in connection with **discharge** were not in conflict with the provisions in the other law relative to compulsory retirement. In conclusion, and reasoning that both Acts ought to be construed together, it was held that a teacher who is qualified for retirement, but who did not wish to retire voluntarily, could nonetheless be retired without violating the provisions of the Teacher Tenure Act.

The Teacher Tenure Act, especially § 73-12-13, N.M.S.A., 1953 Comp., 1957 Supp., in treating of notice and hearing, employs the language ". . . dismissal . . .", and ". . . terminate the service . . .". **Bearing in mind the obvious purpose of the Teacher Tenure Act**, we think such phraseology is but a polite way of saying "fired".

Now, we are no longer possessed of the Teachers' Retirement Act, but instead must direct our attention to the Educational Retirement Act of 1957, being §§ 73-12-34 to 73-

12-91, both inclusive. N.M.S.A., 1953 Comp., 1957 Supp. The question then becomes whether the conclusion reached in our former opinion, while entirely correct then, still continues to properly interpret the law. We think it does.

True, the former opinion rested, at least in part, on the provision authorizing **retirement and placement on emeritus employment status**. We have searched in vain for comparable language in the new law, but do not deem the omission conclusive, **insofar as this question is concerned**. Section 73-12-64, being a savings clause, does not supply the present omission.

Despite lack of language which may have motivated the prior decision of this office, we find § 73-12-68 provides:

"Applications for retirement shall be made by the member upon a form provided by the board. **In the case of members who have attained the age of sixty (60) years, application may be made for their retirement by the local administrative unit.**"
(Emphasis supplied)

In our opinion, that determines the issue at hand. Nor do we find anything in §§ 73-12-66 or 73-12-67 in conflict herewith.

We hold the Teacher Tenure Act and the Educational Retirement Act must be construed together. When a tenure teacher reaches sixty and is otherwise eligible to retire, but does not desire to, we believe nonetheless his local administrative unit may apply for his retirement. Compulsory retirement as a consequence thereof would not be a **discharge** or termination within the meaning of § 73-12-13.

On the other hand, if it were contended § 73-12-68 conflicts with § 73-12-13 to the extent of this question, § 73-12-68 would still have to govern, being later in point of time.