

Opinion No. 64-89

July 8, 1964

BY: OPINION OF EARL E. HARTLEY, Attorney General Thomas A Donnelly, Assistant Attorney General

TO: Mr. J. D. Sneed, Superintendent, New Mexico School for the Visually Handicapped, Alamogordo, New Mexico

QUESTION

QUESTION

Are the teaching personnel of the New Mexico School for the Visually Handicapped subject to the provisions of the teacher tenure law?

CONCLUSION

See Analysis.

OPINION

ANALYSIS

The New Mexico State legislature has enacted a comprehensive teacher tenure law, Section 73-12-13, N.M.S.A., 1953 Compilation, guaranteeing teachers who hold certificates from the State Board of Education and who have been employed in a particular county or other particular administrative school unit for three consecutive years and hold a contract for the completion of a fourth consecutive year in the school district, to a hearing upon the charges of dismissal and to administrative and judicial review of the local board's decision in the event the dismissal is affirmed after appropriate hearing.

This section has application solely, however, to school personnel possessing certification from the State Board of Education and who have been employed continuously in a particular school district.

Section 73-12-14 and Section 73-12-15, N.M.S.A., 1953 Compilation govern the form of employment contract of certified teachers, and bestow certain rights to hearings, enumeration of charges of dismissal and right of appeal to contract teachers who are discharged during the period for which they hold a teaching contract.

Section 73-12-15.1, N.M.S.A., 1953 Compilation extends the provision of the tenure law and teacher contract laws to teachers in certain state institutions. The section sets out as follows:

"The provision of Sections 73-12-13, 73-12-14, and 73-12-15 New Mexico Statutes Annotated, 1953 Compilation, and all subsequent legislation governing employment and discharge of contract teachers be and **the same hereby are made applicable to all properly certified teachers in state institutions whose salaries are derived in whole or in part from the state public school equalization fund.**" (Emphasis supplied).

Insofar as any teacher employed by the New Mexico School for the Visually Handicapped, (1) is employed under a contract in a teaching capacity, (2) has all or any portion of his salary derived from the state public school equalization fund, and, (3) is a teacher properly certified by the State Board of Education, then such person is covered under the provisions of Sections 73-12-13, 73-12-14 and 73-12-15, N.M.S.A., 1953 Compilation.

If, however, teaching personnel employed by the institution do not meet the three qualifications enumerated above, then no statutory provision extends the benefit of the teacher tenure law or the teacher contract law to such individuals employed by the New Mexico School for the Visually Handicapped, **unless** these privileges are extended by policy of Board of Regents of the institution or are afforded under a written contract. We are advised that at the present time the Board of Regents has not adopted any such policy and that no tenure provisions have been granted by virtue of a written contract to employees of the institution. In the absence of statutory provision or contractual obligation, no tenure rights may be found to exist as a matter of course. See also prior Attorney General's Opinion No. 134, dated July 23, 1963.

Therefore, on the basis of the above, it is our opinion that except insofar as teaching personnel may come within the requisites designated supra, no tenure rights are existent.