

## Opinion No. 67-103

August 28, 1967

**BY:** OPINION OF BOSTON E. WITT, Attorney General

**TO:** Norbert C. Lopez Superintendent Espanola Municipal Schools P.O. Box 249  
Espanola, New Mexico

### QUESTION

#### FACTS

On July 1, 1965 the Espanola School System absorbed School District # 89 of the Rio Arriba County School System by consolidation. At the time the Espanola System passed a resolution to honor all contractual commitments entered into by the County Board of Education with employees of District # 89.

A school teacher, with tenure in the county system, who had not taught in District # 89 the year prior to consolidation, was employed in the Espanola System where she has been employed for two years. There is no evidence that at the time of consolidation the teacher had a contract for the ensuing year.

#### QUESTION

Did this teacher retain tenure when she was employed in the Espanola System?

#### CONCLUSION

Yes, see analysis.

### OPINION

#### {\*151} ANALYSIS

Our Supreme Court has considered the effects of consolidation on tenure previously. **Hensley v. State Board of Education**, 71 N.M. 182, 376 P.2d 968 (1962). In that decision the Court considered the question of whether a teacher automatically lost tenure status acquired in a particular school district when that district is consolidated or merged with another school district. The court held that tenure was not automatically lost. The factual basis of the Court's decision in that case was as follows. The teacher acquired tenure in a district, the Quay County School District. Subsequently, the portion of that district in which the teacher taught was consolidated or merged with another district. The Court held she retained tenure status stating it did not find that the legislature intended that a teacher should lose tenure by designating a new name or school board.

It is our opinion that the teacher in the fact situation described above has retained tenure. First, it should be noted that under Section 72-12-13 (B), N.M.S.A., 1953 Compilation a person acquires tenure by teaching in a district **or** in a particular county. We assume county here refers to a county system and not just teaching within county boundaries. It is apparent that tenure was acquired in this instance from the system and not from either a particular school or district within the county system. A tenure teacher could be assigned to any of the schools within the system without having tenure affected.

In the instance of consolidation in Rio Arriba County it is known <sup>{\*152}</sup> that the county system was divided in three units. One portion was merged with the Espanola System. The remainder was divided into the Chama Independent School District and the other into the Ojo Caliente Independent School District. Under the decision of the Supreme Court in **Hensley v. State Board of Education**, supra, each of these new boards was a successor board, in that they were in part, a continuation of the old county system. As such, teachers with tenure in the county system at the time of consolidation, who were employed within one of three districts, would continue to hold that status in the new system. **Hensley v. State Board of Education**, supra.

It might be noted that the teacher involved had no contract with the county system at the time of consolidation. This point is immaterial if the teacher received no notice of dismissal or reemployment. Under Section 73-12-13 (A), N.M.S.A., 1953 Compilation (P.S.), absence of a proper written notice is to be construed as reemployment for the ensuing school year.

By: Myles E. Flint

Assistant Attorney General