

Opinion No. 68-70

July 1, 1968

BY: OPINION OF BOSTON E. WITT, Attorney General

TO: Honorable Herbert J. Taylor State Senator 1602 Linda Drive Gallup, N. M. 87301

QUESTION

FACTS.

A teacher was employed under contract by a school district for the school years of 1962-1963 and 1963-1964 and then took a year's leave of absence in the 1964-1965 school year. The teacher returned and was employed by the school district during the next three successive school years. No contract has been signed for the 1968-1969 school year. The teacher, however, was given tenure by the school board at the end of the 1966 school year.

QUESTIONS

1. Could a school board lawfully grant tenure to a teacher who does not otherwise meet the requirements of Section 73-12-13, N.M.S.A., 1953 Compilation?
2. Did the above described teacher acquire tenure when his three years of service were not consecutive, having been interrupted by a leave of absence for one year and not having a contract for the next school year?

CONCLUSIONS

1. No.
2. See analysis.

OPINION

{*114} ANALYSIS

Section 73-12-13, N.M.S.A., 1953 Compilation provided that any certified employee who was "employed" in a particular county or other particular administrative school unit for three consecutive years and who holds a contract for the completion of a fourth consecutive year in the school district cannot be dismissed without cause. It is our opinion that a school board neither has the power to confer tenure upon a teacher who has not met the conditions of Section 73-12-13, supra, now Section 77-8-11, N.M.S.A., 1953 Compilation, nor deny tenure to a teacher who has met the conditions of one of these sections of the New Mexico Statutes.

It is our opinion that "employed" as used in Section 73-12-13, supra, and now Section 77-8-11, supra, requires that a contract be entered into for four consecutive years and services be rendered. See **Wood v. Los Angeles City School District**, 44 P.2d 644, 645 (Calif. Dist. Ct. of App. 2d Dist. 1935). If a contract was not entered into between the school board and the above described teacher in the 1964-1965 school year, the local school board had no authority to confer tenure on the teacher at the end of the 1965-1966 school year.

By: Gary O'Dowd

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