

Opinion No. 37-1728

August 5, 1937

BY: FRANK H. PATTON, Attorney General,

TO: Mr. H. R. Rodgers Superintendent of Public Instruction Santa Fe, New Mexico

{*144} This is a somewhat delayed response to your request for our opinion dated July 24th. Your request was assigned to me and for the past week or so I have been engaged in the preparation and trial of cases in the Federal Court and was therefore unable to get out the various requests for opinions which have been placed on my desk. I trust my delay will not have inconvenienced you too much.

You refer to Chapter 119, Laws of 1937, relating to the retirement of members of faculties of state educational institutions. As I understand Chapter 119, I do not believe the governing board enters into any contract in the strict sense of the word. The board, in their discretion, may vote to retire any member of the faculty or employee with the appropriate title indicated in the act. Thereafter the annuity or annual pension continues not because of any contract with the board but by force of the statute itself which expressly states as follows:

"And such person shall thereafter and during the remainder of his or her life receive an annuity or annual pension not to exceed one-half of the maximum salary received by such person during the five years next preceding his or her retirement hereunder, provided, that said annuity shall not be more than fifteen hundred (\$ 1,500.00) dollars annually."

Furthermore, Chapter 119, Laws of 1937, must be read in connection with Section 130-1316 of the 1929 Compilation which sets out the manner of procedure ultimately providing for payment. For your convenience we shall set out the provisions of Section 130-1316 in full:

"The amount of such annuities shall be included in the annual budget of the institutions retiring members of the faculty or employees hereunder and the payment thereof shall be out of money which shall be appropriated by the legislature therefor at the same time and in addition to the amount of the regular appropriation for said institutions and shall be turned over to the treasurer of the proper board of regents or governing body by the state treasurer in the same manner as other state appropriations and shall be paid to the pensioners entitled thereto by the treasurer of the board of regents or other governing body."

From the foregoing you may readily see that your second inquiry about any conflict with other statutes limiting the contractual power of the governing board becomes immaterial because ultimately it is the {*145} legislature which must appropriate monies for the payment of these annuities or annual pensions, presupposing, of course, that the

amount of such annuities shall be included in the annual budget of the institution making the retirement of the member or members of the faculty.

Trusting the foregoing sufficiently answers your inquiry, I am

By: FRED J. FEDERICI,

Asst. Atty. Gen.