

Opinion No. 41-3698

January 22, 1941

BY: EDWARD P. CHASE, Attorney General

TO: Mrs. Grace J. Corrigan Superintendent of Public Instruction Santa Fe, New Mexico

{*29} This will acknowledge receipt of your letter of January 22 wherein you inquire whether or not a school teacher who is now totally disabled is entitled to compensation as provided by Chapter 237, Laws of 1939, if she cannot procure a medical certificate to the effect that she will also be totally and **permanently** disabled.

Section 3, Chapter 237 of the Laws of 1939, provides in part as follows:

"The Board of Education of any municipality, county, independent school district or union high school district may retire from service any teacher * * * when such person is **totally and permanently** disabled from continuing in his profession as shall be determined by a **certificate of medical examiners** appointed by the State Educational Budget Auditor and the State Superintendent of Public Instruction * * * when any such person is so retired he shall be entitled to receive **during the period of his total disability** an allowance * * *"

From your letter I take it that the school teacher whom you refer to is now totally disabled, but the medical examiners refuse to sign a statement to the effect that she will also be permanently disabled.

In view of that portion of Section 3, Chapter 237 of the Laws of 1939, which reads as follows, "during the period of his total disability", and construing the section as a whole, I do not believe it was the intention of the Legislature for any person to be "**permanently**" disabled before they would be eligible to receive the benefits as set out in the Retirement Act. Such a construction would be absurd, and I do not believe that the courts would sustain any such view. See *Continental Oil Co. v. City of Santa Fe*, 36 N.M. 343, and cases therein cited.

It is my opinion that a school teacher who is otherwise qualified should not be denied relief under the so-called Retirement Act, if he is, at the time of making application for the benefits, totally disabled, and according to the medical examiners unable to perform his duties. I do not believe that it is necessary for a school teacher to have a doctor's certificate showing that he is totally and permanently disabled before he will be entitled to benefits under the Retirement Act; but to the contrary, I am of the opinion that total **temporary** disability is sufficient.

Trusting that the foregoing sufficiently answers your inquiry, I am,

By HOWARD F. HOUK,

Asst. Atty. General