

Opinion No. 41-3970

December 10, 1941

BY: EDWARD P. CHASE, Attorney General

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

{*135} I have your letter of December 10 wherein you have requested our opinion on the following question, which I quote from your letter:

"Where a school teacher, after teaching actively in the schools for more than twenty (20) years, seeks and receives a leave of absence because of sickness, and thereafter returns to active service as a teacher, but after a few months spent in teaching is unable to continue because of illness, is such teacher entitled to the benefits provided in Chapter 207 of the Session Laws of 1941."

In other words, you desire to know whether or not a leave of absence granted because of sickness would have the effect of breaking the tenure of service required by the provisions of the Retirement Act.

After careful consideration of the question which you have propounded, I have come to the conclusion that where a leave of absence is granted to a teacher in good faith, because of illness on the part of the teacher, that it would not have the effect of breaking the tenure of service of the teacher so as to prohibit the teacher from participating in the benefits set forth under Chapter 207 of the Laws of 1941. This is particularly true of the instant case which you have submitted as you state in submitting the facts, as above quoted, that the teacher in question taught actively for more than twenty (20) years before being granted a leave of absence because of illness and thereafter returned to active service as a teacher but was only able to teach a short period before the recurrence of her illness.

{*136} In addition to the above question propounded, you have also requested our opinion as to whether or not a teacher, while on leave of absence, may be paid a nominal salary if complying with such requirements or assignments as the Board of Education may direct. In connection with this question, we enclose herewith a copy of Attorney General's Opinion No. 3878, which we believe answers the question in the affirmative.

By HOWARD F. HOUK,

Asst. Atty. General