

## Opinion No. 42-4011

February 2, 1942

**BY:** EDWARD P. CHASE, Attorney General

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

{\*155} On January 30 we gave you our opinion as to how you should compute the amount of pension due to a retired teacher when said teacher is retired after having served fifteen or more years but less than twenty. In this opinion, I held the minimum figure which could be used in computing the amount of the pension in such cases to be \$ 600.00.

In the light of this opinion, you state that it is necessary for you to change the procedure heretofore followed in computing the amount of pension to which such a retired teacher is entitled, for the reason that you have in certain instances used a figure less than the minimum figure of \$ 600.00. This being true, if our construction of the law in the former opinion be correct, then those teachers retired on a proportionate figure of less than the minimum figure of \$ 600.00 have erroneously been underpaid.

In view of this fact, you now desire our opinion as to whether or not the difference between what they have been paid and what they should have been paid may, at this time, be paid out of current funds for the current fiscal year.

Section 4, Chapter 207 of the Laws of 1941 in substance provides that the State Treasurer shall transfer 2% of the Emergency School Tax and 2% of the schools' part of the State Income Tax to a special fund to be known as "The Teacher Retirement Fund". The said act further provides that the said funds shall be distributed and paid by the State Treasurer to the county treasurers of the several counties in accordance with certificates signed by the State Educational Budget Auditor and the State Superintendent of Public Instruction, and that any surplus remaining in said fund at the end of any fiscal year shall be held as a reserve in said fund, and shall, upon order by the State Educational Budget Auditor and State Superintendent of Public Instruction be invested by the State Treasurer as provided by law, etc.

In that no specific appropriation of moneys to be credited to the Teacher Retirement Fund is specifically provided for, and in that your department has erroneously failed, in a few isolated cases, to pay retired teachers or employees that amount of pension to which, under law, in our opinion, they are entitled, I can see nothing in the statutes which would prohibit you from, at this time, making a supplemental certificate to the State Treasurer directing him to remit to the various county treasurers sufficient money to compensate those retired teachers with that sum of money erroneously withheld from them in the first instance.

In addition, I am of the opinion that you may legally direct the State Treasurer to remit to the county treasurers the difference between the sum set up for this fiscal year and that sum to which the said teachers are entitled, using the \$ 600.00 minimum figure in computing the amount due and owing to them.

By HOWARD F. HOUK.

Asst. Atty. General