

## Opinion No. 42-4044

March 13, 1942

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

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

{\*170} In your letter of March 10, 1942, you request our opinion as to whether or not a school teacher, who has taught for twenty years or more in the state, may be retired under the provisions of Chapter 207, Laws of 1941, notwithstanding the fact that said teacher may not yet have attained the age of sixty years.

The laws of our state governing the question which you have submitted are not as clear as they might be. As a matter of fact, there is sufficient ambiguity in our statutes as a whole, which we believe will warrant our resorting to a construction of the same.

Section 1 of Chapter 207, Laws of 1941, after relating the procedure to be followed in the retirement of a teacher, lays down the following requirements to be met before any teacher is entitled to be retired. I quote sub-section (a) under Section 1 of the Act:

"When the said teacher, supervisor, custodian, nurse, principal, superintendent or other professional employee is over the age of 60 years and has been employed in the public schools of this state for at least 15 years, of which the last **seven** years were served consecutively and immediately prior to the date of such retirement."

Under Section 2 of Chapter 207, Laws of 1941, we find the following statement:

"When any person who has served as an employee in the public schools, \* \* \* for twenty years or more is retired by a Board of Education as herein provided, he shall be entitled to receive annually for the remainder of his natural life \* \* \*"

Reading Section 2, without taking into consideration the entire provisions of Chapter 207, it might appear at first blush that a teacher could be retired after having taught for twenty years, regardless of the fact that he had not yet attained the age of sixty years. We do not believe this was the legislative intent, however, for the reason that Section 2, under which we find the broad general statement above quoted, deals primarily with the amount of compensation which a teacher is entitled to, who has served for fifteen or more years, but less than twenty years. It occurs to me that the legislature intent is further shown by the provision of Section 4 of said Act, which provides for the retirement of a teacher at any age, who has taught for not less than five years, providing that he becomes totally disabled. In connection with the entire section of the law, it is to be noted that as a general rule, all pension acts of which the writer has any knowledge set forth a minimum age which must be attained before any person will become eligible for a pension. The reason for this rule is patent.

In any event, I am of the opinion that it is necessary for a teacher to attain the age of sixty years {*\*171*} before he will become eligible for retirement under our law as it now exists, regardless of the number of years of service he may have had prior to the time of his attaining said age.

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

By HOWARD F. HOUK,

Asst. Atty. General