

## Opinion No. 42-4140

August 21, 1942

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

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

{\*232} In your letter of August 18, in speaking of the eligibility of a teacher for retirement, you propound the following question: "Is a person eligible for retirement after fifteen years or after twenty years of teaching experience in New Mexico?"

Chapter 207, Laws of 1941, is the statute setting forth the prerequisites for, and the rules governing the retirement of teachers. Section 1 (a) of this act reads as follows:

"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."

The first part of Section 2 of said act reads as follows:

"When any person who has served as an employee in the public school, or in the State Department of Education of New Mexico, or in any combination of said employments for twenty years or more is retired by a Board of Education as herein provided, \* \* \*"

Reading the above quoted portion of Section 2 alone, it would appear at first blush that Section 1 (a), supra, is inconsistent with the above quoted portion of Section 2, but when we read all of the latter section, it becomes patent that such is not the case. In the same Section 2 we find the further following provision:

"When any person who has served as an employee in the public schools, or in the State Department of Education of New Mexico, or in any combination of said employments **for 15 or more years**, and less than 20 years, is retired he shall be entitled to receive annually for the remainder of his natural life that proportion of one-half of his average annual salary for the past five years as his years of service bear to 20 years of service, and provided further that in such cases the minimum or maximum amount to which he shall be the proportionate amount of the minimum or maximum hereinabove set forth. \* \* \*"

Construing all of the provisions of Section 2 of Chapter 207, Laws of 1941, I conclude that there is absolutely no inconsistency between Section 2 and Section 1 (a) of the said act and that a teacher in New Mexico, being otherwise qualified, is entitled to be retired after having served a minimum of 15 years.

By HOWARD F. HOUK,

First Asst. Atty. General