

**Opinion No. 42-4162**

October 2, 1942

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

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

{\*256} By your letter of October 1, 1942 you have requested an opinion of this office upon the following question:

"If a teacher should leave one of our public schools for the purpose of teaching, we shall say, mathematics, in the Army, would such a teacher lose his tenure in New Mexico as it pertains to our retirement law, that is, as concerns the time spent teaching in the Army?"

This problem has been studied heretofore by this office, and in Opinion No. 3970, dated December 10, 1941, we stated that a leave of absence granted to a teacher in good faith would not effect a break in the tenure of service of a teacher so as to prohibit the teacher from participating in the benefits allowed under Chapter 207, Laws of 1941. (I am assuming that in your reference above to retirement law, you had in mind Chapter 207, Laws of 1941.)

In the present instance it is our opinion that a teacher who obtains a bona fide leave of absence from a New Mexico public school to take a teaching job in the United States Army would not lose his rights to the benefits of Chapter 207, Laws of 1941. The time which he spent with the Army {\*257} could not be added to his public school period of service, for the reason that teaching in the Army is not teaching in the public schools of New Mexico. However, the Army teaching should not be considered as interrupting "consecutive" service in the public schools of New Mexico, if the teacher has the bona fide leave of absence above referred to.

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

By GEO. H. HUNKER Jr,

Asst. Atty. General