

Opinion No. 43-4246

February 19, 1943

BY: EDWARD P. CHASE, Attorney General

TO: Mrs. Georgia L. Lusk, Superintendent of Public Instruction, Department of Education, Santa Fe, New Mexico

In your letter dated February 17, 1943, you inquire whether a teacher who has been retired under the provisions of Chapter 207, Laws of 1941, and is called back to active duty as a teacher, may receive a regular teacher's salary, and in addition, draw the amount for which he is qualified under the teachers' retirement act.

Chapter 207, Laws of 1941, appears as Sections 55-1114 to 55-1121 inclusive. Under the provisions of Section 55-1117 of the 1941 Compilation, if a teacher is retired after five years of service because of total disability, he is entitled to receive a retirement allowance during the period of such total disability. In the event such a teacher is called back to active service, and is able to begin teaching actively, that would be evidence that his total disability no longer exists, and such teacher would no longer be entitled to the retirement allowance, but could only draw a regular teacher's salary.

Section 55-1114 provides that teachers and other school employees entitled to the benefits of the act may be retired from active service when such employee is over the age of sixty years, and has been employed in the public schools of this state at least fifteen years, of which the last seven years were served consecutively and immediately prior to the date of such retirement.

Sub-section (b), which apparently only pertains to teachers who have served at least fifteen years, then provides that the school board or department may require such employee to perform such services with the schools as he may be physically qualified to perform.

In view of the fact that the law states that such employees are to be retired from active service. I am inclined to believe that the services which may be required of the school employee after retirement would be nominal services, if any.

Section 55-1115 provides for retirement of school employees who have served for twenty years or more, and by relation back, I assume that the last seven years must have been served consecutively and immediately prior to the date of such retirement. In this section there appears the statement that

"He shall be entitled to receive annually for the remainder of his natural life, etc."

This statement appears again in the same section with reference to employees retired after fifteen years or more, and less than twenty years of service.

From these two sections, it is apparent that once a school employee has qualified and is retired under the act, he is entitled to receive the retirement allowance for the balance of his natural life, regardless of the fact that he may obtain other employment, or regardless of the fact that in an emergency he may be recalled to active service in the school.

In view of this interpretation of the law, I am of the opinion that when a teacher or other school employee who has been retired under the act is called to active duties, that there is nothing in the law to prohibit a school board from paying to such teacher or other employee the amount which may be paid under the budget, and the amount which may be agreed upon between the board and such teacher or other employee. This amount may be paid in addition to the retirement allowance which such school employee is entitled to receive for the remainder of his natural life in any event.

Trusting that this satisfactorily answers your inquiry, I am

By C. C. McCULLOH,

First Asst. Atty. General