

Opinion No. 43-4316

June 17, 1943

BY: EDWARD P. CHASE, Attorney General

TO: Mr. Jack Hanlon, Bursar, New Mexico Highlands University, Las Vegas, New Mexico

We are in receipt of your letter of June 15, 1943, in which you state that you desire, due to emergency, to call back to active service for the summer a teacher who is now on pension. You ask our opinion as to whether or not this teacher will be penalized for assisting you during the term.

I am enclosing herewith a copy of Opinion No. 4246 relating to a similar question, although involving a different statute. In that opinion the First Assistant Attorney General, C. C. McCulloh, held that under the language contained in Section 55-1115 of the 1941 Compilation that a person pensioned "be entitled to receive annually for the remainder of his natural life a retirement pay," that such person was entitled to the pension whether or not he was put back in active service and whether or not he was paid a separate salary.

The same language relied upon therein is found in Section 55-2804 of the New Mexico 1941 Compilation providing for persons in state institutions. This language is as follows:

"And after such retirement, to pay to the person so retired a monthly pension for the remainder of his or her natural life."

In view of the foregoing, it is my opinion that the teacher involved is entitled to her pension even though she be re-employed.

As to what, if any, salary in addition to such pension she should receive is a matter to be determined by agreement between the teacher and the Board of Regents.

Trusting that the foregoing sufficiently answers your inquiry, I am

By ROBERT W. WARD

Asst. Atty. General