

Opinion No. 43-4386

September 29, 1943

BY: EDWARD P. CHASE, Attorney General

TO: Mr. Floyd Santistevan, Ass't. Supt. of Public Instruction, Department of Education, Santa Fe, New Mexico

You handed to us for our attention the letter addressed to you by Irvin P. Murphy, Superintendent of Carlsbad City Schools, and a uniform teacher's contract which he proposes to use in all instances in the Carlsbad City Schools.

It is apparent that Mr. Murphy has misconstrued the opinion written by Mr. C. C. McCulloh under date of July 28, 1943, in which he recommended the adoption of two forms of teacher's contracts to conform with the provisions of Chapter 60, Laws of 1943.

In Mr. McCulloh's opinion, he pointed out that under this law, various classes of teachers were treated in various ways. As to teachers who are qualified and have served two years, such teachers are entitled to be given notice of discharge prior to the end of the school year, which notice must fix the time and place of hearing. Chapter 60 then goes on and provides for a hearing and a right of appeal for such teachers.

As to teachers who have served less than two years, but who are duly qualified, this act provides that notice of their discharge must be given before the end of the school year, or in default thereof, that their previous contract will be construed as renewed.

However, there is a third class of teachers mentioned in this act, and that is the teachers holding war certificates of emergency, whose qualifications are below those normally required. These teachers are excluded from any of the benefits of this act. It was because of this latter class of teachers that Mr. McCulloh suggested that two types of contracts be adopted. His reason for doing this was that while the failure to give notice to such teachers would not, under Chapter 60, automatically renew the contract, yet if such contract was entered into with a teacher holding only a war emergency certificate, by the terms of the contract itself, such contract would be renewed by failure to give notice.

For this reason, the form adopted by Mr. Murphy is not satisfactory, since he makes Paragraphs 2 and 6 inapplicable to teachers who had served less than three years, which teachers are entitled to certain of the benefits of Chapter 60, including the right to have notice of dismissal given prior to the end of the school term. His uniform contract, if he insists upon using one form of contract, should exclude teachers who are not fully qualified, rather than teachers who have taught less than three years.

Trusting that the foregoing sufficiently answers your inquiry, I am

By ROBERT W. WARD,
Assistant Attorney General