

Opinion No. 44-4483

March 16, 1944

BY: EDWARD P. CHASE, Attorney General

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

We are in receipt of your letter of March 11, 1944, in which you ask the following two questions:

(1) "What constitutes the probation period before a teacher can be given a permanent contract? Does this period end at the end of the second year of teaching or is it terminated after the third contract is issued for beginning the third year of teaching?"

(2) "What is the legal interpretation of sub-standard qualifications. Would this include emergency teachers hired during this period of teacher shortage?"

From your letter I assume that what you wish is an interpretation of Chapter 60 of the Laws of 1943.

In answer to your first question I wish to take this opportunity to affirm Opinion No. 4346 and Opinion No. 4408, addressed to your office on July 28, 1943 and November 15, 1943, respectively, in which opinions we held that a teacher who had been employed two years was entitled to a notice of hearing, as provided in Chapter 60 of the Laws of 1943.

While the notice to discontinue the service of the teacher must be given before the closing day of school and a teacher would not have completed two full years of teaching, yet it is my opinion that the intention of the Legislature is clear that if a teacher has been employed for two consecutive school terms such teacher would be entitled to notice and hearing.

In answer to your second question your attention is directed to the fact that, since the last Legislature repealed Section 55-1109 of the 1941 Compilation, our statutes do not set forth the qualifications of teachers. By Section 55-105 of the 1941 Compilation, however, the State Board of Education is given the power to determine the qualifications of teachers and to issue teaching certificates to qualified teachers. Thus, the answer to your second question depends upon what qualifications are established by that board to entitle a teacher to a full certificate. Teachers not holding this full certificate, but holding special certificates issued to permit teachers to teach during the emergency would not be entitled to the benefits of Chapter 60.

By ROBERT W. WARD,

Asst. Atty General