

Opinion No. 44-4527

June 13, 1944

BY: EDWARD P. CHASE, Attorney General

TO: Mrs. Georgia L. Lusk, Executive Officer, State Board of Education, Santa Fe, New Mexico

I have your letter of June 12, 1944 wherein you request an opinion of this office concerning whether a person who had taught three continuous years in a school prior to the passage of the 1943 Teacher Tenure Law and the 1943-44 school year is entitled to a permanent tenure.

Section 55-1111 of the Supplement to the 1941 Compilation (Chap. 50, Laws of 1943) provides in part as follows:

"Notice to discontinue the service of a teacher properly certified and who has served a probationary period of two years in a particular district shall specify a place and date, not less than five (5) days nor more than ten (10) days from the date of mailing such notice, at which time said teacher may, in his discretion, appear before the board for a hearing."

It is noted that the statute specifies without qualification that any teacher who has served a period of two years in a particular district is entitled to the rights provided in such section. In view of the use of the past tense in this wording of the section and in view of the fact that the legislature used this phraseology without in any way limiting it or providing that such probationary period should only begin upon the passage of the amendment, it is my opinion that a teacher serving two consecutive years in a particular district, including the 1943-44 school year, is entitled to all the benefits of our Teacher Tenure Law.

Hoping that the above fully answers your questions, I remain

By HARRY L. BIGBEE,

Asst. Atty. General