

Opinion No. 45-4798

October 1, 1945

BY: C. C. McCULLOH, Attorney General

TO: J. C. Knode, Dean College of Arts and Sciences University of New Mexico
Albuquerque, New Mexico

{*139} We are in receipt of your letter of September 25, 1945, and the enclosed data prepared by one of the members of your faculty.

From the attached data, it appears that the faculty member taught from 1909 to 1935, inclusive, in various universities in Germany; that he held a position as research fellow and lecturer at the University of Michigan from March, 1940 to March, 1941, and that he was first employed by the University of New Mexico in January, 1942. In view of this situation, two questions are asked:

1. May half credit be given for the prior educational service of this man outside of the United States?
2. What is the meaning of the passage at the end of Section 1 (a), Chapter 50, Laws of 1945, "In every case, not less than 15 years of educational service in New Mexico is required"?

Section 1 (a), Chapter 50, Laws of 1945 provides:

"When the said teacher, supervisor, custodian, nurse, principal, superintendent, other regular full time employee of the public schools or any regular full time employee of the aforesaid state institutions, or said departments and boards, who is over the age of sixty (60) years, and has been employed in the public schools, or in said institutions or departments, or in a combination of such services, **of this state** for at least fifteen (15) years, said person may be retired. (Provided that in either case, that half credit may be given for not more than ten (10) years of educational service in **other states** prior to **servicing in New Mexico**;) and that full time credit may be given to all persons with prior educational **service in New Mexico** for time served in the armed forces of the United States who re-enter educational service in this state after honorable discharge from the armed service of the United States. In every case not less than fifteen (15) years of educational **service in New Mexico** is required, of which the last five (5) years were educational service in New Mexico consecutively and immediately prior to the date of such retirement;"

In answer to your first question, it is observed that the Legislature refers to this state, which is the State of New Mexico, U.S.A. Thus, it appears that when the Legislature refers to other states, it means states in the U. S. A. other than the State of New Mexico. Had the Legislature intended to cover states in foreign countries, it would have

used the words "foreign countries" or something similar, since in common legislative parlance, by "state" {**140*} the Legislature means state of the United States, and not a foreign country.

In view of the foregoing, it is my opinion that the faculty member should be given one-half credit for his year's service at the University of Michigan, but that he should not be given credit for his educational service in foreign countries.

In answer to your second question, it is noted that in the first part of the above quoted section the requirement is made that the teacher be over the age of 60 years and have been employed in this state for at least 15 years. Immediately following this comes the proviso that half credit may be given for not more than ten years of educational service in other states prior to serving in New Mexico.

This section then goes on and repeats the first mentioned language, saying "in every case, not less than 15 years of educational service in New Mexico is required." This is the identical language used in the first part of the section and should be given the same meaning, that is to say, it should be construed subject to the proviso.

In order not to render the proviso meaningless, it is necessary to consider that ten years educational service outside the State of New Mexico will be construed as five years educational service in New Mexico within the meaning of the two clauses requiring 15 years educational service in New Mexico.

In view of the foregoing, it is my opinion that in calculating whether a teacher has had 15 years educational service in New Mexico, it is necessary to give one-half credit for the prior educational service in other states. That is to say, it is my opinion that a teacher who has taught ten years in the State of New Mexico and prior to that time taught ten years in other states will be considered to have 15 years educational service in New Mexico.

Trusting the foregoing sufficiently answers your inquiries, I remain

By ROBERT W. WARD,

Asst. Atty. General