

Opinion No. 50-5307

July 8, 1950

BY: JOE L. MARTINEZ, Attorney General

TO: Honorable Thomas E. Lusk Assistant District Attorney Carlsbad, New Mexico

{*163} I am in receipt of your recent letter in which you ask an opinion on several questions resulting from the recent election which has made School District No. 10 in Eddy County, New Mexico a Municipal School District in Lovington, New Mexico.

You state that prior to the effective date of the above change to a municipal school district the Eddy County Board of Education called an election for the purpose of having the qualified electors of the district vote upon the question of the issuance of bonds for the purpose of building a new school building at Lovington. The bond issue carried by an overwhelming majority and the bonds have been issued and sold to the State Treasurer of New Mexico and the money has been paid over to the Eddy County Board of Education. You ask an opinion as to whether the Eddy County Board of Education continues to have supervision over the expenditures of this money after July 1st, the effective date of the creation of the municipal district, or whether the expenditure of the funds is to be placed in the hands of the assumed to be elected municipal board of education.

Section 55-909 provides for the election of whether a newly incorporated municipality desires to vote on becoming a municipal school district and part of that statute reads as follows:

"The creation of no municipal school, schools, or school district as authorized herein shall become effective until July 1 following the creation thereof.

"The governing board of each such municipal school, schools, or school district shall consist of five (5) Members who shall be selected and who shall respectively hold office and in all things be governed by the law now relating to municipal schools; provided that in event such municipal school, schools, or school district is created subsequent to the date now provided by law for the election of members of municipal school districts, a special election shall be ordered, called, held, conducted and canvassed, as now provided by law, for the selection of members of such municipal school, schools or school district."

It is evident from the above wording that the new municipal school will become effective on July 1st following the creation thereof and no sooner, thereby placing it on a July 1st fiscal basis.

Section 57-907 provides as follows:

"The said board (Municipal Board of Education) shall have the same powers and duties respecting its districts and schools as are possessed by county boards of education." * *

It is evident from the clear wording of the above statutes that when a rural school district which is under the jurisdiction of a county board of education of that particular area is voted into a municipal school under the provisions of the law, all of the management, powers and duties are placed in the hands of the municipal board of education on July 1st following the creation thereof, and that the county board of education is relieved of any supervision, management, control or jurisdiction over the newly {164} created municipal school.

You ask a second question as to who has the right to supervise the construction of the school building. It is indicated by the facts that the county board of education feels that it has the sole jurisdiction to supervise the construction. From the opinion and with its reasoning set forth in question number one it is evident that the county board of education ceases to have any supervision, management, control or jurisdiction over the newly created municipal school. This would also include supervision of the construction of the new building.

Statute 55-107 governs the answer to your second question, and it states as follows:

"The state board of education, in addition to the powers already given it by law, shall have the following powers:

"(a) To examine and approve all plans and specifications for the repair or construction of school buildings of five (5) rooms or less; and no contract shall be written or any money expended by any board of education or governing authority of any school district in this state for the repair or construction of any school building in this state until such plans and specifications have been approved by the state board of education or the state superintendent of public instruction. Any contract not so approved shall be absolutely void, and constitute no charge in law or equity against such school board. Provided, however, that this provision shall not apply where the expenditure is a less sum than five hundred dollars (\$ 500.00)."

It is evident from the close wording of the statute above that the newly created municipal school board can enter into a contract and spend money for the repair or construction of a school building, but it cannot do so until such plans and specifications have been approved by the state board of Education or the state superintendent of public instruction. This applies to schools of more than five rooms as well as buildings of five rooms or less.