

Opinion No. 53-5637

January 15, 1953

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. Floyd Santistevan Assistant Supt. of Public Instruction State Department of Education Santa Fe, New Mexico

{*22} This is in reply to your request for an opinion of this office wherein you wish to know if the Raton Municipal Board of Education could lawfully and properly pay the full sum contemplated to the principal of the Raton Public School by reason of his contract ending June 30, 1952, in spite of the fact that he passed away on April 14, 1952.

Presuming that this is a personal services contract and one containing no extraordinary or unusual covenants, it is my opinion that you can not make any payments for the period that the employee was not performing the services. The death of an employee prior to the completion of his term of his services contemplated in the contract makes the fulfillment of the terms and conditions of such a contract impossible, and therefore the obligations under the contract are severable, **12 Am. Jur. 949**. The contract is not therefore binding for payment for subsequent periods and payment under the contract would be a payment improperly made in violation of Section 55-615 N.M.S.A., 1941 Compilation, as amended.

Your attention is particularly directed to Section 41-812 N.M.S.A., 1941 Compilation, as amended, wherein it states:

"Except in the case of payments covering lawful vacation periods and absences from employment because of sickness any person who receives payment or any person who makes payment or causes payment to be made from public money for such payment purports to be for wages, salary, or other return for personal services have not in fact been rendered shall be guilty of a felony. * * *"

In summation, it is the opinion of this office that upon the death of a contract employee of a Municipal Board of Education prior to the date of termination of the contract, the date of death terminates the contract and no payments can be made for services contracted to be rendered subsequent to the date of deceased.

By: William J. Torrington

Asst. Attorney General