

Opinion No. 55-6104

February 15, 1955

BY: RICHARD H. ROBINSON, Attorney General

TO: Mrs. Georgia L. Lusk, State School Superintendent, Santa Fe, New Mexico

In your letter dated February 9, 1955, you request an opinion concerning the interpretation of a portion of § 73-19-2 of the 1953 Compilation, relative to change or modification of existing transportation routes for school bus purposes.

Although not stated in your letter, it is my understanding that the question arose in a disagreement between two adjoining municipal school districts, the first of which for several years did not have adequate facilities to take care of certain high school students. A transportation route was established in order that the second municipal school district could transport students from the first district to the high school and for this purpose a three-year contract was made with the school bus driver. After a period of two years, the first district became qualified to educate all of the high school students but the students who had begun their training in the second district school desired to continue attending such school and for the year 1954-1955 the contract was again let for the third year to the bus driver and the transportation route was continued in effect. The bus transported approximately fifty three students from the first district to the second district high school during the fall of **1954**.

The first municipal district brought an injunction action against the second district which, upon a hearing by the District Court, was dismissed. The Court felt that the students had a right to attend the school of their choice and that the second school district could legally continue the transportation route.

Thereafter, in the fall of 1954, the former State Board of Education ordered the transportation route changed so that it only extended to the boundary line of the first school district, causing the high school students being transported the inconvenience of walking from their homes to the school district line to meet the bus.

§ 73-19-2 provides for the establishment of permanent school bus routes and further provides that when such routes accommodate less than ten pupils, they shall not be established nor maintained. A portion of this section reads as follows:

"The State Board of Education may change or modify the bus routes established as provided herein from time to time where it is found necessary or advisable to do so, but such change shall only be made effective for the succeeding school year."

In view of the purpose of the act to establish permanent routes and of the specific language prohibiting a change in the routes after a contract is let and during the school year where ten or more pupils are being transported, it is our opinion that the language

is binding upon the State Board and the order for the change or modification of this route was invalid as being outside the powers of the State Board of Education.

By C. C. McCulloh

Assistant Attorney General