## Opinion No. 59-66

June 24, 1959

**BY:** FRANK B. ZINN, Attorney General

**TO:** Hon. James C. Compton District Attorney Ninth Judicial District Portales, New Mexico

County Boards of Education may not employ teachers for ensuing year when a new school district became effective prior to beginning of new school year.

Teachers have no tenure rights in newly created municipal districts.

Teachers have no tenure rights in newly consolidated districts.

A gymnasium located in an old district and for which there remains a bonded indebtedness, may be moved to new location in newly created municipal district.

### OPINION

*{*105}* This is written in reply to your request for an opinion on the following questions:

1. May a county board of education employ teachers for the 1959-1960 school year for a school presently under the jurisdiction of the County Board but to become part of a newly created municipal school district effective July 1, 1959?

2. Will teachers who are teaching in such school, who have acquired tenure, have tenure rights in the newly created municipal district?

3. If two school districts are consolidated and a teacher has tenure in one of the districts, does he (she) automatically have tenure in the new consolidated district?

4. Does a newly created municipal school board have authority to move a gymnasium, located on land which has been *{*106}* annexed to the municipal district, with consent of owner of a reversionary interest when there remains outstanding bonded indebtedness for the gymnasium against the original district?

It is my opinion that a County Board may not employ teachers for the 1959-1960 school year when the jurisdiction of such board ends June 30th, 1959.

It is my opinion that teachers who have acquired tenure prior to creation of a new municipal school district will not enjoy continuing tenure in the new district.

It is also my opinion that upon consolidation of existing school districts that teachers having acquired tenure in the existing districts will not automatically acquire tenure rights in the consolidated district.

Finally, it is my opinion that a gymnasium which was built with bond proceeds, which bonds are presently in part outstanding and on property which has become a part of a newly created municipal school district, may be moved to a different location within the district.

The stated questions have been presented to this office from Roosevelt and Grant Counties as the result of recent changes ordered in the school districting. It is believed that one opinion will sufficiently answer the independent inquiries received.

The answer to the first question is found by examining the language and provisions of §§ 73-10-7 and 73-12-13, N.M.S.A., 1953 Comp. The former section provides for an election to determine the desire for creating a municipal school district. All qualified electors of the municipality and the territory annexed are afforded the right of voting. It is further provided under this section that the creation of a new school district shall become effective July 1st following the election and canvass.

By § 73-12-13 the governing boards of education are required on or before the closing day of school to serve each teacher then employed with written notice of re-employment or dismissal.

It is true that the present "governing board" is the County Board of Education which is charged with the duty of giving notice of re-employment or dismissal by § 73-12-13. This responsibility is, however, in the instant situation without purpose and if carried out would result in fruitless effort, not sanctioned in law. **Fisherdick v. San Juan County Board of Education,** 30 N.M. 454, 236 P. 743; **State v. So. Pac. Co.,** 34 N.M. 306, 281 P. 29.

As a second proposition of law, supporting my answer and conclusion to the first question, an attempt to offer a contract by the present "governing board" would in effect be a nullity by reason of the fact that the present board governs one district as a distinct governmental subdivision while the board as will govern after July 1st will govern an entirely different entity. It is generally held that there is an exception to the general rule to the effect that contracts entered into by an outgoing school board membership are binding on its successors. 47 Am. Jur. 378-379, § 117. In the instant situation however, there is something more than a mere succession of board membership. Here we have the creation of an entirely new and distinct governing authority. **Water Supply Co. v. City of Albuquerque,** 9 N.M. 441, 54 P. 969; **Brown v. Bowling,** 56 N.M. 96, 240 P. 2d 846. See also Attorney General's Opinion No. 4900, 1946; 5374, 1951; 6472, 1956; 58-1, 1958; 58-177, 1958. Absolutely no suggestion is found in our law which permits one school district to contract for the benefit of another.

On the basis of the applicable law cited it must be concluded that *{*107}* the present county board may not employ teachers for the ensuing year.

I believe the second and third questions stated have been earlier disposed of by this office. See Attorney General's Opinions Nos. 4885, 1946; 4900, 1946; 5374, 1951; 6472, 1956. By Opinion No. 4900, May 9, 1946, it was stated:

"It appears to me that of necessity the words "in a particular district" relate back and modify the words "three years" as well as the words "holds a contract for the completion of a fourth" so that the teacher must have served three years in the same district in which he holds a contract for teaching the fourth. This seems apparent when Chapter 60 of the Laws of 1943, the former statute, is examined. This statute provided that "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 . . .'. All the Legislature did in amending Chapter 60 was to change the period from two years to three years with a contract for the fourth.

In view of the foregoing, it is my opinion that a teacher, to be entitled to a hearing on discontinuation of his services, under Chapter 125, must have served all three years and hold a contract for a fourth year in the identical district."

And Opinion No. 6472, June 15, 1956, was concluded as follows:

"Because the matter is not expressly covered by statute, and because the State Board of Education is not given authority to dispose of the matter by virtue of consolidation orders, it is impossible to state with certainty the possible outcome of a court decision in the matter. However, it is my opinion that because of the tenor of the language from the statute above quoted the Teacher Tenure Act would not apply to teachers employed by a school district which has been merged by consolidation into another."

In view of the fact that no pertinent changes have been made in the controlling tenure law, it must be concluded that tenure rights do not carry over to newly created municipal school districts nor to consolidated districts.

Turning now to the final inquiry, consideration must be given the requirements of § 73-20-4, N.M.S.A., 1953 Compilation as amended which provides in part the following:

". . . Whenever any school district consolidated hereunder shall have outstanding and unpaid any bonds or certificates of indebtedness, such district shall retain its identity for the purpose of debt service until such time as such bonds or certificates are paid in full. No district consolidated under the provisions of this act (73-20-1 to 73-20-4) shall be or become responsible for the debt service of any other district included in such consolidation . . ."

Under this statute no doubt exists as to the responsibility of the old district to pay off all outstanding bonded indebtedness for the gymnasium. This obligation may not be

assumed by the new district, even though the area of the old district is now under a new authority. The question put, however, is whether the gymnasium may be moved from its location in the old responsible district to a new and different location in the new municipal district. For the purpose of this discussion it is understood that the reversionary interest holder waives all rights.

Firstly, it is to be stated that bonded indebtedness of the nature here considered is provided *{*108}* for by § 73-8-20, and by § 73-8-38 there is further provided the tax levy necessary for the payment of principle and interest for retirement of these bonds. § 73-8-39 specifically sets up the debt limit based upon the assessed valuation of **taxable property** within the district. Lastly, by Article VIII, § 3, Constitution of New Mexico, "The property of . . . school districts . . . shall be exempt from taxation."

It must be concluded then, that if the holder of a reversionary interest in the gymnasium improvements waives or otherwise relinquishes his interest and that the school district improvements in no way affect the security reserved to the bond holder, there can be no objection to moving the gymnasium to a different location within the newly created school district. The governing school board need be guided only by the determined needs of the district.

Hilton A. Dickson, Jr.