

## **Opinion No. 65-217**

October 29, 1965

**BY:** OPINION OF BOSTON E. WITT, Attorney General Roy G. Hill, Assistant Attorney General

**TO:** Harry Wugalter, Chief, Public School Finance Division, State Capitol Building, Santa Fe, New Mexico

### **QUESTION**

#### **FACTS**

On April 19, 1965 the Public School Finance Division held a budget hearing for the Rio Arriba County Schools. Because this school district was to be reorganized by the State Board of Education it was made clear at the hearing that only a tentative budget was being considered and that a new budget hearing would be held for the new district.

On May 24, 1965 a budget hearing was held for the Taos County Schools and tentative approval was given to a budget for Ojo Caliente District No. 6 at that time. It was understood by all concerned that there would be a new budget hearing following reorganization.

After the above hearings were held the State Board of Education accepted the various plans for reorganization and ordered that the consolidation of school districts #9, Ojo Caliente, #24, El Rito, and #54, La Madera, of Rio Arriba County become part of district #6, Ojo Caliente, of Taos County and assume the identity of Ojo Caliente Independent School District #6, Taos County.

Between April 19, 1965 and the reorganization the Rio Arriba County Superintendent entered into contracts with all of his teachers based upon the salary schedule that was given tentative approval at the hearing on April 19, 1965. The Taos County Superintendent did not enter into contracts with his teachers. Rather, he issued letters of appointment.

As of now, the Public School Finance Division has not given final approval for the budget of the reorganized school district. The reason for this delay was that until just recently the new board of education had not hired a superintendent. Now, the new superintendent is faced with contracts issued by the old Rio Arriba County Board of Education based on a tentatively approved budget and letters of appointment by the Taos County Board of Education and a different tentatively approved salary schedule.

Both forms of teacher contracts that have received approval by the State Board of Education provide that the contract is subject to the rules and regulations of the State Board of Education and the Board's approved budget.

## QUESTIONS

1. Must a newly created Board of Education honor the contracts issued by the Rio Arriba County Board of Education that were based upon a proposed salary schedule that was granted tentative approval?
2. May the newly created Board of Education devise its own salary schedule and present this schedule for adoption at the time of the special budget hearing that will be held for this district?

## CONCLUSIONS

1. Yes, but see analysis.
2. Yes.

## OPINION

### {\*354} ANALYSIS

The reorganization outlined above was accomplished under authority of Laws of 1965, Chapter 30, Section 1. This law is annotated as Section 73-20-7, N.M.S.A., 1953 Compilation (P.S.). This section provides in part:

"All contracts entered into by the county board of education with certified qualified school personnel prior to this reorganization shall be honored by the reorganized district."

Consequently, it cannot be questioned that the new district must honor the contracts of the Rio Arriba County teachers. However, as noted in the facts, all the approved teacher contracts must have the provision that it is {\*355} subject to an approved budget. Therefore, we can assume that all the contracts under consideration here contained that provision.

In Section 187 (a) of Schools and School Districts, 78 C.J.S., at page 1042 are these rules regarding teacher contracts.

"Except insofar as controlled by the constitutions or statutes, the making, requisites, and validity of a contract of employment of a teacher, principal, or superintendent in the public schools are governed by the rules relating to contracts generally. Thus the contract must be mutual, and certain and definite in its terms."

Section 73-12-14, N.M.S.A., 1953 Compilation (P.S.) as noted above requires that teacher contracts be in a form approved by the State Board of Education. This section is the only one we have found which seems to bear on the present question. As previously noted, the language regarding the approved budget is language approved by the State

Board of Education. In our opinion this language does not make the contract unenforceable for lack of mutuality, or lack of certain and definite terms. It therefore follows that this language is binding on the teacher and that the teacher's salary will be subject to the approved budget of the new school district even if this budget does not reflect the same salary schedule upon which the Rio Arriba County salaries were based. Section 186, Schools and School Districts, 78 C.J.S. 1039 states that:

"Subject to such restrictions as may be imposed by statute, a school board or officer may fix the salaries of teachers."

We find such restrictions in New Mexico in our budgeting laws covering school finance and taxation. School budgets must be in the form and detail specified by the Chief of the Public School finance Division and must contain under the heading of General operations the salaries of personnel chiefly concerned with instruction. Section 73-7-84, N.M.S.A., 1953 Compilation (P.S.). School budget estimates for each administrative unit must be submitted by the local board of the chief of the Public School Finance Division prior to April 15 of each year for the ensuing fiscal year. Section 73-7-77, N.M.S.A., 1953 Compilation (P.S.). The budget is then finally fixed by the School Budget Commissioners appointed under authority of Section 73-7-78, supra.

As we have seen from the facts above, the budget for the new school district has never been finally fixed. It is our opinion that the new board of education may present its own salary schedule for approval at the hearing for finally fixing the budget for the new school district. It is also our opinion that the salaries approved at this hearing will be binding on those teachers who had received a contract from the Rio Arriba County Superintendent as well as the Taos County teachers who had not previously contracted with their district.