

Opinion No. 66-112

October 11, 1966

BY: OPINION OF BOSTON E. WITT, Attorney General Myles E. Flint, Assistant Attorney General

TO: Ralph F. Apodaca, State Fire Marshal, State Capitol Building, Santa Fe, New Mexico

QUESTION

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Do Sections 73-17-10 and 73-17-11, N.M.S.A., 1953 Compilation, which provide for fire drills at "public and private schools" apply to institutions of higher learnings, such as the University of New Mexico and New Mexico State University?

CONCLUSION

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{*151} ANALYSIS

Sections 73-17-10 and 73-17-11, N.M.S.A., 1953 Compilation, provide as follows:

"73-17-10. REQUIRED FIRE DRILLS. -- RESPONSIBILITY OF PERSONS IN CHARGE -- FIRE DEPARTMENT COOPERATION. -- In every public and private school in New Mexico there shall be a fire drill at least once every week during the first month of each term and at least once every month thereafter. It shall be the duty of **the school superintendent, the principal, or the teacher in charge of any or all such schools** to see that the provisions of this law are carried out. In localities where a paid fire department is maintained a member thereof shall be requested to be in attendance at such fire drills for the purpose of instruction and constructive criticism." (Emphasis added.)

"73-17-11. VIOLATIONS OF ACT -- PENALTY. -- Failure on the part of any **school superintendent, {*152} principal or teacher**, chargeable with execution of the provisions of this act [73-17-10 to 73-17-11], shall constitute sufficient grounds and cause for his or her immediate discharge." (Emphasis added.)

The question asked specifically is whether the phrase is "private and public schools in New Mexico" was intended to encompass colleges and universities as well as grade schools, junior high schools and high schools. There is no general New Mexico case

law or statutory law which defines the term school as such. It would appear that that term must be defined in each instance in the context of which it is used.

Looking to case law elsewhere, we find that schools are generally defined as places for instruction in any branch or branches of knowledge. **Livingston v. Davis, Iowa**, 243 Iowa 21, 50 N.W. 2d 592 (1951); **People v. Levisen**, 404 Ill. 574, 90 N.E. 2d 213 (1950); **Board of Education v. Ferguson**, Ohio App., 39 N.E. 2d 196 (1941); **Board of Supervisors v. Cothran**, 84 Cal. App. 2d 679, 191 P. 2d 506 (1948); **City of Chicopee v. Jakubowski**, 348 Mass. 230, 202 N.E. 2d 913 (1964).

From the general rule, it would appear that the definition of schools would, for the purposes of the above enactment, encompass various public and private colleges and universities within this State. However, the language in Section 73-17-10, supra, which is underscored in the quote above, indicates an intent contrary to the general rule.

In this State, "the school superintendent, the principal or the teacher in charge of any or all such schools" bears the responsibility of seeing that fire drills are conducted pursuant to the terms of this Section. The use of these specific titles, superintendents, principals and teachers, indicates clearly that the Legislature was dealing with particular classes of schools when this enactment was passed. Those schools within the State of New Mexico which are operated by superintendents, principals and teachers as such are all below the college or university level. Colleges and universities within this State are under the direction in most instances of presidents who are answerable to boards of regents or similar boards. These men are quite distinct in function and position from superintendents, principals, and teachers.

It is therefore, our opinion that as used in the context of these particular statutes, schools refer to institutions of learning below the college and university level.