

## Opinion No. 12-905

June 18, 1912

**BY:** FRANK W. CLANCY, Attorney General

**TO:** Hon. Alvan N. White, State Superintendent of Public Instruction, Santa Fe, N. M.

### **SCHOOLS.**

County school superintendent can continue to receive salary under the territorial law.

### **OPINION**

{\*43} I have before me your letter of the 17th instant and take the first possible opportunity to answer. You say that in February, 1912, in accordance with Section 21, Chapter 97, Laws of 1907, you fixed the salaries of county school superintendents for the year 1912, subject to such action as might be taken by the first State Legislature under Section One of Article X of the Constitution as to the classification of counties and the fixing of salaries of county officers. You further say that in view of the fact that the county salary bill has been vetoed, county superintendents have requested you for an opinion with reference to their salaries and that, unless the decision recently rendered by the Supreme Court makes it illegal for the superintendents to draw their salaries as fixed by you, it would seem that the salaries so fixed might be quarterly drawn by county superintendents; and you request my opinion upon the question.

The section of the Constitution upon which was based the recent decision of our supreme court provides that no county officer should receive any fees or emoluments other than the annual salary provided by law, and that all fees earned by any county officer should be paid into the treasury of the county. County superintendents do not earn any fees and have no opportunity to receive any emoluments other than the annual salary provided by law. Therefore, this clause cannot affect them.

If it could be held that the office of county superintendent is a new office, created by the Constitution, for which the Legislature has {\*44} provided no salary, the conclusion would be inevitable that such an officer must serve without salary until the Legislature fixes one; but there is no ground for that position. I believe that county superintendents are mentioned only twice in the Constitution and that such mention merely recognizes their existence. Section 2 of Article VII declares that women are qualified to hold the office of county school superintendent, and Section 6 of Article XII provides that the State Board of Education shall include a county superintendent of schools. Under these circumstances I believe that the pre-existing laws as to salaries of county superintendents continue in force by virtue of Section 4 of Article XXII of the Constitution which continues all territorial laws, not inconsistent with the Constitution, in force until altered or repealed. Therefore, I see no reason to doubt that the superintendents can continue to receive salaries under the territorial laws thus

continued in force. I find nothing in the San Miguel County cases in conflict with this view.