

## Opinion No. 17-2065

October 26, 1917

**BY:** MILTON J. HELMICK, Assistant Attorney General

**TO:** Mr. J. E. Owens, Taiban, New Mexico.

Unpaid Teachers' Warrants Draw 6% Interest and a Larger Amount Cannot Be Contracted For.

### OPINION

We have your favor of the 25th inst. wherein you ask if it is possible for the County School Boards to include in contracts with teachers of their respective counties, a provision providing for the payment of twelve per cent interest on school warrants which are not paid when presented because of lack of funds. You state that the payment of only six per cent works a great hardship on the teachers as the banks will not accept the warrants unless they draw twelve per cent. You also state that Former Attorney General Clancy ruled that twelve per cent. could be paid.

The matter is governed by Section 17 of Chapter 105 of the Laws of 1917, which section is an amendment of Section 4855 of the Code of 1915, and reads as follows:

"That section 4855, Code of 1915, be and it hereby is amended so as to read as follows: No board shall issue warrants or certificates of indebtedness of the school district, in excess of the amount of the levy for one year, but all school orders shall draw six per cent interest per annum after having been presented to the County Treasurer and not paid for want of funds, which fact shall be indorsed upon the order by the Treasurer; and when there is sufficient money in the treasury to pay any such order the president and secretary of the County Board of Education shall draw an order for the interest due on said order and further interest shall cease from date of such order."

Although we have searched diligently, we have been unable to find the opinion of former Attorney General Clancy, to which you refer; and on investigating the question you present we are very reluctantly forced to the conclusion that such warrants can be made to draw no more than six per cent. The present law works extreme hardship upon the teachers by reason of its unfair and unjust terms, but we see no way to escape the plain provisions of the law. Relief will have to come through legislative channels, and it is very unfortunate that the last legislature, in amending this particular section, did not see fit to raise the rate of interest.

The six per cent rate provided by the law is a limitation beyond which there is no authority to go. Almost the identical question which you ask was passed upon by the Supreme Court of Iowa in the case of Phelps v. The District Township of Summit, 90

Iowa, 53; 57 N. W. 642. The law of Iowa, which is almost identical with ours, provided that: --

"all school orders shall draw lawful interest after having been presented to the Treasurer of the district and not paid for want of funds, which fact shall be endorsed upon the order by the Treasurer."

The only difference between this section and ours is that the Iowa law uses the term "lawful interest," and our section says "six per cent. interest." The lawful interest in Iowa was six per cent. and the court held that the words "lawful interest" meant six per cent. In the case cited it was attempted to pay ten per cent interest and the court held that such attempt was illegal; that all school orders were limited to six per cent. This conclusion was reached in spite of the fact that under the general laws of Iowa, ten per cent. interest could be charged by agreement. The court held that such provision had no reference to school orders, but that the provision that school orders should draw lawful interest was a specific limitation permitting only six per cent.

It is our opinion that under the New Mexico statutes no more than six per cent interest can be added to school warrants, and obviously such limitation cannot be changed by contract. It will be noted further than the Board of Education has no authority to fix any interest on warrants at all, but when warrants are presented and not paid, the interest provision of the law automatically attaches. In other words, the interest is created by the statutes and not by any act of the school authorities.