

**Opinion No. 19-2163**

January 20, 1919

**BY:** N. D. MEYER, Assistant Attorney General

**TO:** Hon. Thomas B. Rapkock, Superintendent of Schools, Torrance County, Estancia, New Mexico.

Salary County Superintendent of Schools Payable Out of General County School Fund.

**OPINION**

Following our phone conversation and confirming my opinion given you, I address you this letter as per my promise.

I have before me your letter addressed to Mr. Wagner, State Superintendent, and in which you ask relative to the propriety of applying the apportionment sent to Torrance county by Mr. Wagner toward the payment of your salary on account of the failure of the commissioners to provide for a salary for the county superintendent.

In the first place, I do not understand just what is meant by the statement that a provision was not made for your salary, as my investigation of the law reveals nothing touching thereon, except this: that by section 14, Chapter 12 of the 1915 Laws, a provision is made that the salaries of county superintendents of schools shall be paid quarterly out of the General County School Fund of the respective counties, and it appears to me that if there is any money in said fund it may be applied to the payment of your salary without it being necessary for the county commissioners to make any further provision for the same. I am not sure, as I find nothing expressly thereon in the Codes, that if there is not sufficient funds in the General County School Fund that the county commissioners may transfer sufficient money to said fund from the General County Fund to take care of your salary, but it seems to be the practice that such is admissible, provided, of course, that repayment to the County Salary Fund must be made when there is available funds in the County School Fund.

However, as I informed you over the telephone, Chapter 105, section 11, at page 294, provides that the county school superintendent and the county board of education shall apportion the county school fund, which includes the apportionment by the state superintendent of schools to the several districts within the county, etc., provided that the County Board of Education is authorized to leave in the County School Fund a sufficient amount to meet such warrants as may be legally drawn against said fund, as elsewhere provided by law.

It is my opinion that you can avail yourself of this provision in the law in order to insure sufficient money out of the County School Fund to pay your salary.

Concluding, there seem to be two courses that you can pursue, either by having the Board of County Commissioners transfer money from the County Salary Fund to the County School Fund to pay your salary or to leave in the County School Fund at the time that you make your apportionment to the different districts of the county a sufficient amount to meet your salary warrants.

You will note by referring to section 15 of Chapter 12 of the 1915 Laws that there is a provision that if there is not sufficient funds in the county salary fund to pay the salaries of county officials then recourse may be had to the Current Expense Fund, which shall be reimbursed when funds are available in the County Salary Fund, but this does not help you any because of the fact that a special provision is made by the section just preceding this that your salary should be paid out of the County School Fund.

However, relying on the general practice and on the opinion arrived at after consultation with other members of this office, a transfer may be made from the County General Fund to the County School Fund for the purpose of paying your salary, and if not sufficient funds are to be had in the County General Fund, then resort may be had to the Current Expense Fund, notwithstanding the fact that the law is not absolutely clear on this point.

Hoping that this may be of assistance to you in arriving at a decision as to what you will do in the matter of your salary, and with best wishes, I am,