

Opinion No. 19-2297

June 11, 1919

BY: HARRY S. BOWMAN, Assistant Attorney General

TO: Mr. Earl Douglass, County Superintendent of Schools, Aztec, New Mexico.

School Boards May Condemn Property for School Purposes.

OPINION

Mr. Lougee has requested the office to write to you in regard to the right of a school district to condemn property for the purpose of erecting school houses, and for establishing an agricultural department in connection with that school.

The right of eminent domain was given to school districts by the provisions of sections 4845 and 4846, Code 1915, which were sections 39 and 40 of the Session Laws of 1891.

The first numbered section, however, has been amended, and the latter one repealed, so that in their present forms as they appear in the Code they are of no further effect.

Section 6, Chapter 105, Laws of 1917, vests in the County Board of Education the right to acquire property for school purposes in rural districts by way of eminent domain, and provides that the rights shall be exercised in the same manner as the power is exercised by railroads.

Of course, it would be necessary for the County Board of Education to first attempt to acquire the property desired by purchase, and in the event of the failure so to do, then the power of eminent domain may be exercised.

While section 4845, Code 1915, provided that the amount of land acquired by condemnation proceeding could not exceed one acre, this part of the section has been omitted in the amendatory section, which is section 15, Chapter 105, Laws 1917, and therefore the quantity of the land so acquired is not limited by statute. Of course, an amount of land which may be acquired by this method for school purposes should be only such a quantity which would reasonably be necessary for that purpose. If from five to fifteen acres were absolutely necessary for the purpose of establishing an agricultural department in connection with the school then such a quantity could of course be condemned, but it would be necessary that the proper showing be made in the condemnation proceeding that such an acreage was necessary to establish this department.