

Opinion No. 20-2492

February 24, 1920

BY: HARRY S. BOWMAN, Assistant Attorney General

TO: Mr. J. H. Wagner, State Superintendent of Public Instruction, Capitol Building.

Power of Boards of Education to Contract For Teachers in Advance.

OPINION

We have before us a letter addressed to you from I. W. Dwire, Secretary Taos County Board of Education, under date of February 11, handed to us yesterday, in which inquiry is made regarding the authority of County Boards of Education to contract with teachers for the coming school year. The letter states that an entirely new board will be elected in Taos in May of this year.

Under date of February 8, 1913, former Attorney General Frank W. Clancy rendered an opinion to Honorable John E. Griffiths of Socorro, which appears on page 150 of the Report of Opinions of Attorney General of New Mexico 1912-1913, wherein he advises as follows:

"You also ask my opinion as to whether or not the present board can legally employ teachers for the next school year and enter into binding contracts with them. I can see no reason why the present board of education should not be considered as having all of the powers of any board and, indeed, there is no dissolution or change of the board by reason of new members being elected. The board continues, although its personnel may be changed. If, in the ordinary course of the administration of school affairs, the time arrives, before the election is held, when it becomes proper or necessary to make contracts for the next school year, I can see no reason why the board should hesitate to act because an election is coming."

On March 21, 1919, Assistant Attorney General N. D. Meyer rendered an opinion to Mr. Epimenio Martinez of Wagon Mound, quoting the above mentioned opinion, and adhering to the views expressed therein.

We are aware of no statute which specifically prohibits the execution of contracts by Boards of Education or County Boards employing teachers for the ensuing year, unless it should be those laws which limit the expenditure of funds or the contracting of such expenditures to the particular year in which the expenditures or the contracts are made.

Section 1227, Code 1915, provides that "it shall be unlawful for any . . . board of education, board of trustees, or board of school directors of any school district, for any purpose whatever to become indebted or **contract any debts of any kind or nature**

whatsoever during any current year which, at the end of such current year, is not and cannot be paid out of the money actually collected and belonging to that current year."

Section 5158, Code 1915, provides that,

"Every officer, board, body or agency, or any member thereof, empowered to expend any public money or to direct the expenditure thereof, or to contract indebtedness against or in view of specific appropriations, is hereby prohibited from **making any contract, incurring any expense, or contracting any liability against this State, or any public fund thereof, which shall make, tend to make, or contemplate any excess of expenditure**, beyond the terms of the laws authorizing expenditures by them, or either of them, or under their direction."

The foregoing quotations from the laws of our state would indicate that Boards of Education or Boards of Directors of School Districts, which would include the present County Boards of Education, are prohibited from entering into any contracts the payment of which cannot be made within the current year.

We believe, however, that the foregoing conditions provided for in the laws can be met by a proviso incorporated in the contract that it should be effective only if the tax levy should be made to pay the necessary salary.

We are enclosing herewith the letter from Mr. Dwire which accompanied your oral request for this opinion.