

Opinion No. 20-2524

March 22, 1920

BY: N. D. MEYER, Assistant Attorney General

TO: Hon. J. C. Valdez, Superintendent of Schools, Tierra Amarilla, N.M.

Vaccination of Indigent School Children.

OPINION

We are in receipt of your letter of March 19th and note what you state therein in regard to the vaccination of school children under the provisions of Chapter 85 of the Session Laws of 1919, with special reference to the provision that states that where the parents of children are unable to pay to have the children vaccinated, that the County Board of Education should meet the expenditure.

That portion of Chapter 85 to which you have reference, reads as follows:

"The vaccination provided for in the next preceding section may be done by any reputable physician or under his direction, and shall be paid for by the parents of such children, when they are able to do so, but in case of their inability to pay for the same by reason of poverty, then such vaccination shall be done by the county or municipal health officer, or under his direction and shall be paid for by the county or municipal board of education. Provided, that inoculation for the prevention of small-pox by the internal use of variolinum taken under the direction and care of a licensed physician may take the place of vaccination with cow-pox where inoculation by vaccination is required by this act."

You will note by the provisions of the above quoted section of the law, that in case of the inability of parents, by reason of poverty, to pay for such vaccination, that the same shall be done by the county or municipal health officer, or under his direction, who shall be paid for these services by the county or municipal boards of education. In your case I presume that the case does not involve a municipality and, therefore, the duty of vaccinating indigent children devolves upon the county health officer, and I believe that under the law, the matter should be handled in this manner.

You should prepare a list of all those children who have not been vaccinated, and whom you know cannot be vaccinated on account of poverty of the parents, and submit the same to the county health officer with a request that he proceed to vaccinate as required under the provisions of Section 29 of Chapter 85. If the health officer fails for any reason to perform these services within a reasonable time, I would then report the matter to the State Department of Health with the request that they see that compliance with the section referred to be enforced.

I do not agree with the statement in the letter addressed to you by the State Department of Health, to the effect that it is squarely up to the county board of education to see that the work is done. In the light of the law, it is my opinion that it is mandatory upon the county health officer to do or have the work done, and if he fails in this, then it is up to the State Department of Health to do or have the work done.

There is no question but that the county board of education must make provision to pay for the services rendered in such cases, and I think that the county board of education could legally pay for these services from the general county school fund.

We return herewith the letter from the State Board of Health.

Trusting that this letter makes the law clear to you as we interpret it, and that you will be able to proceed with the matter of having the indigent school children in your county vaccinated, I remain,