

Opinion No. [29-85]

August 3, 1929

BY: J. A. MILLER, Assistant Attorney General

TO: James N. Bujac, Assistant District Attorney, Carlsbad, New Mexico.

SCHOOLS -- Bond election, when; transportation of pupils.

§ 120-702, § 120-1203, § 120-1422, Code 1929.

OPINION

Reference is made to your letter of July 25th in which you request an opinion upon certain matters affecting schools, as follows:

1. You say that after the voting of school bonds and the advertising thereof for sale, the County Board of Education and Treasurer were permanently enjoined by the court from proceeding further with the bond issue, and you ask:

(a) Will it be necessary to hold a bond election again in said District?

In order to answer this intelligently one should have more information than that furnished in your statement inasmuch as you do not advise upon what ground or grounds the injunction is based. However, in any event, it would appear that bonds may not be sold as a result of that election, and before bonds may be issued and sold a new election will have to be held.

Your next two questions are (b) "If so, how soon may this be done?" and (c) "What is the earliest date that the Petition may be presented to the Board of County Commissioners?" The answer to each of these questions is to be found in section 702 of the School Code, which provides that to initiate the right to issue bonds, a petition in duplicate asking for the calling of an election must be filed between January 15th and May 31st, both inclusive, and which section ends with the proviso that not more than one such election shall be held in any two consecutive years.

If the decision of the court in the injunction suit was based on a finding that no election was held, even though attempted, I am of the opinion that the two year limitation would not apply, it appearing to me that that proviso was to prevent the repeated holding of elections in which an adverse vote had been recorded. If the difficulty arose from some omission or mistake in procedure, making it necessary for the court to hold that a valid election had not been held, I believe that another attempt might be made without waiting a full two years. However, since to initiate an election petitions must be filed between the dates January 15th and May 31st, no further election could be held this year.

Under section (d) you ask how the expenses of advertising the bonds, sale of which has been enjoined by the court, may be paid since the bonds were not sold and no funds obtained thereby. The answer to this will depend upon the state of your finances and such arrangement as you may be able to make with the Educational Auditor. You probably have no fund included in the budget for this year which would include this item. If, however, you have a balance in some fund in excess of what was estimated as needed, you may be able to arrange with the Educational Auditor for a transfer of such amount as may be necessary. If you have no such balance, you should endeavor to get the item into the budget now being prepared, and I fear that you have delayed too long to be able to do this. It is suggested that you take it up with the Educational Auditor.

As a second division of your letter, you ask whether the County Board of Education or the Municipal Board of Education is required by law to furnish transportation or school to children when there are eight children or more living more than three miles from school in the District, and further, does establishing a school in each district, regardless of the size of the District fulfill the duty imposed upon said Board by law.

I find no statute directly requiring boards either to maintain schools or to provide for the transportation of pupils. Section 4840 of the Code provides that a board of directors may maintain more than one school in its district for the better accommodation of the patrons of said district. By the provisions of that section the county superintendent may consolidate school districts on petition, and is also empowered to disorganize a district whenever the number of persons of school age within such district has been reduced below fifteen, from causes over which the county superintendent does not have control, and when such conditions seem likely to remain permanent. Section 4843 provided that there should be established in each school district one or more schools. This section was later repealed.

Section 1213 of the School Code provides that in every rural school district and in every municipal school district the minimum school term shall consist of at least seven months, and provides further, that **when school funds permit**, school must be maintained for at least 140 days.

By chapter 83, Laws of 1919, it is provided that no rural school district shall be entitled to more than one school room for each fifty children, or fraction thereof, of school age within the district.

As to the transportation of pupils, I have been unable to find that the legislature ever specifically required school boards to incur such expense other than that the legislature has authorized such expense to be included in the school budget. We find reference to transportation in lieu of maintenance of school in section 406 of the School Code; again in section 604 of that Code we find a provision that the budget item may include transportation and repair of trucks and wagons. Chapter 63, Laws of 1929, also permits this item to be included in the school budget.

By section 1203 it is provided that children who otherwise would be required by the compulsory education law to attend are excused from such attendance if they reside more than three miles from a public school house, and no free public means of conveyance furnished.

Section 1422 prohibits the maintenance of a school or the allowance of a budget in any school district unless such school shall have an **average** daily attendance of at least eight pupils, and provides that no budget allowance for the transportation of pupils shall be made in any school district unless there are at least eight pupils of school age whom it is necessary to transport, and no budget allowance may be made for the transportation of pupils residing within three miles of the school building.

It would seem that with the restrictions indicated in the paragraphs from which quotation has been made school boards or county boards now having control may provide transportation at public expense, and that such expenditure is sanctioned by the legislature without any specific requirement that it be furnished.