

Opinion No. [30-87]

April 28, 1930

TO: T. W. Cocke, Sr., Principal of High School, Hot Springs, New Mexico.

SCHOOLS -- Open to all children of school age.

OPINION

Your letter of April 22, addressed to the State Superintendent of Public Instruction and asking in behalf of the school board an opinion relative to the right of negro pupils to attend public schools, has today been referred to this office with request that we answer the question.

By reference to section 1 of Article XII of the Constitution of the State of New Mexico, we find that "A uniform system of free public schools sufficient for the education of, and **open to, all the children of school age** in the state shall be established and maintained." No distinction is made as to race and of course the legislature could not change the constitutional provision and guaranty even though it desired, nor has the legislature made any attempt to do so.

Section 1201 of the School Code makes provision whereby when in the opinion of the local board and the state board of education it is deemed for the best advantage and interest of the school that separate rooms be provided for the teaching of pupils of African descent such rooms may be provided. But it is distinctly provided that rooms so set apart for the use of pupils of African descent shall be as good and as well kept as those used by pupils of other descent and the teaching therein shall be as efficient.

Unless your district is prepared with the approval of the local board and the state board of education to provide separate rooms for negro pupils and maintain the same on the same standard of comfort and efficient service and efficient teaching as those used by other pupils, you will not be justified in refusing admittance to such negro pupils.