

Opinion No. 31-12

January 15, 1931

BY: E. K. Neumann, Attorney General

TO: Mr. W. C. Montgomery Duran, New Mexico

{*24} This is in answer to your letter of January 13, 1931, asking for an opinion as to whether or not the School Board has authority to employ an attorney to prepare the necessary papers for the issuance of school bonds, and to pay the Attorney for his services in this connection.

By Section 120-902, 1929 Compilation, municipal schools are governed by a board of education having like powers over schools of the district as those possessed by the county boards of education of the rural schools. These duties, among others, include the power "to sue and be sued, contract and acquire and dispose of school property pursuant to law." (Sec. 120-801, 1929 Compilation). There is no officer charged with the duty of representing municipal boards in legal matters. Representation of municipal boards is not among the duties of either the Attorney General or the District Attorney or the City Attorney.

It may be safely stated that school districts which are authorized to contract and to sue may employ attorneys where there is no statute making it the duty of any officer to appear for them. *State v. Aven*, 70 Ark. 291, 67 S. W. 752; *Burgess v. School District*, 1000 Mass. 132. See also notes Ann. Cases, 1918A 502 and L. R. A. 1917D 246. In 24 R. C. L., page 597 it is said:

"Broadly speaking, a school district having the power to sue and be sued may employ an attorney if the employment is necessary for the protection of public interests committed to it. The power to employ includes the power to compensate."

Section 120-701, 1929 Compilation, confers authority upon school districts of the state to issue negotiable bonds of the district. In my opinion, it would follow from the above cited authorities and by implication from said section that School Boards would have authority to employ counsel for the purpose of preparing the bond issue, so as to comply with the law and also to pay such attorney a reasonable fee for his services.

You will note, however, by reference to the last mentioned section that it is not permissible to employ an attorney in connection with the sale of any such bonds.

By: Quincy D. Adams,

Asst. Att'y General