

Opinion No. 31-36

January 28, 1931

BY: E. K. Neumann, Attorney General

TO: Mrs. Georgia L. Lusk, Supt. of Public Instruction, Santa Fe, New Mexico. Attention: Mrs. Margaret Abreu, Asst. Superintendent.

{*36} This is in response to your letter of January 28, 1931, asking whether the driver of a school bus can legally refuse to transport school children attending a Catholic school.

In this connection, I wish to call your attention to section 3 of Article XII of the Constitution of the State of New Mexico, which reads as follows:

"The schools, colleges, universities and other educational institutions provided for by this constitution shall forever remain under the exclusive control of the state, and no part of the proceeds arising from the sale or disposal of any lands granted to the state by congress, or any other funds appropriated, levied, or collected for educational purposes shall be used for the support of any sectarian, denominational or private school, college or university."

It would appear from the above provision of the constitution that a County Board of Education is prohibited from using public school funds for the benefit of sectarian schools. Hence any contract it might make providing for the disposition of school funds contrary to the provisions of this section would be invalid. See *State v. Milquet*, 192 N. W. 392, 180 Wis. 109, in which the following language is used:

"The whole scope and purpose of the statute is to comply with the provisions of the constitutional mandate and that requires that free, non-sectarian instruction be provided for all persons of school age. The board is not authorized to expend public funds for any other purpose. The contract made by the district board whereby it attempted to provide transportation of pupils to a private school was an act beyond its authority and therefore invalid."

Of course, I know nothing of the provisions of the contract with the school bus driver to which you refer, but merely wish to point out that, **even though the contract should provide for transportation of pupils attending a sectarian school**, such provision could not be enforced by the County Board of Education for the reason that it would be invalid.

It would follow then that the driver of the school bus, unless he has a separate and independent contract with the Catholic school, could {*37} legally refuse to transport school children to such school.

By Quincy D. Adams,

Assistant Att'y General