

## Opinion No. 36-1461

November 4, 1936

**BY:** FRANK H. PATTON, Attorney General

**TO:** Mr. H. R. Rodgers, Superintendent of Public Instruction, Santa Fe, New Mexico

{\*31} Your letter dated October 26th, 1936, requesting our opinion upon the following questions submitted by Mr. L. L. Felix, of Carlsbad, is hereby acknowledged.

Mr. Felix asks:

"1. Is it legal for the school board to use school funds to buy food for indigent children?"

The answer is: No.

"2. Is it legal for the superintendent to allow a half holiday monthly to each teacher?"

The answer is: If a rural school district, it is within the discretion of the County Board of Education; if a municipal school district then it is up to the Municipal Board of Education.

"3. Is it legal to use school funds to pay **all expenses** of the superintendent for attending the New Mexico Educational Association?"

The answer is: The same opinion as expressed in the aforesaid question No. 2.

"4. What members of the board should sign warrants, certificates of indebtedness, or any other legal papers, or can any two members sign them at the discretion of the superintendent?"

The answer is: The Chairman of the Board attested by the Secretary.

"5. In taking the school census of all unmarried persons under 21 years and over 5 years, is it legal to pay the enumerator for those names under 5 and over 21? We have a case where the enumerator has furnished over 4,000 names in the class cited above, and he gathered these names under instructions of the superintendent. These names are not to be used {\*32} in the list transmitted to the State Superintendent."

In answering this question: Your attention is called to Sec. 120-816 of the 1929 Compilation, which provides as follows:

"On or before August 1st, of each year, the clerk of the board of school directors shall make and certify to the county school superintendent a complete census of unmarried persons within the district under the age of twenty-one years, and over the age of five years, stating in full, names, ages and sex of such persons. For such enumeration the

clerk of said board of school directors shall be paid from the funds of the district the sum of three cents for each **genuine** name enumerated. Any clerk wilfully enumerating on said list a dead or fictitious person, or one not a resident of his school district, or one not coming within the age limits, or who shall fail to make the enumeration herein provided for and transmit the same to the county school superintendent, upon conviction, shall be fined not more than \$ 100, or be imprisoned not more than thirty days, or by both such fine and imprisonment, in the discretion of the court."

"6. Can one be a member of the Municipal School Board who holds an appointed office in the city?"

The answer to the above question is: Yes.

By: EDWARD P. CHASE,

Asst Atty. Gen.