Opinion No. 39-3106

April 18, 1939

BY: FILO M. SEDILLO, Attorney General

TO: Mrs. Grace J. Corrigan, Superintendent of Public Instruction, Santa Fe, New Mexico.

*{*37}* I have your letter of April 14, 1939, requesting an opinion as to Senate Bill No. 156, Chapter 173, 1939 Laws, and also inquiring whether the county superintendent should nominate the supervisors employed prior to the taking effect of this law, which is June 10, 1939.

Until that chapter goes into effect on June 10, the employment of rural school supervisors is governed by the old law as found in Section 1 of Chapter 114, Laws of 1937, (120-804, 1938 Supplement). Under that law, the rural school supervisor is employed by the county board of education in its discretion, subject to the approval of the state board of education. The superintendent has nothing to say as to whether one should be employed nor as to who should be employed, except when power to employ is delegated to the superintendent by the board of education as provided by that act. As to qualifications, under the old law in effect at the present time, the state board of education is given the right to determine the qualifications necessary for rural school supervisors; and the board may, if it so desires, require all supervisors to meet the qualifications set out by the new law before that law goes into effect, and may refuse its approval unless those standards are met. Consequently, the board may, even before June 10, refuse its approval of supervisors employed now to serve for the coming year unless they meet those requirements.

With respect to the qualifications set out in the new law, you also inquire what is meant by the words "equivalent" of a Bachelor of Arts degree, -- whether "some degree other than a Bachelor of Arts, or merely 120 semester hours" is meant.

The statute requires among other things "at least a Bachelor of Arts degree or its equivalent from a fully accredited college or university," whether some degree other than Bachelor of Arts degree is the equivalent of the latter depends on the nature of such other degree, and the same is true as to the semester hours. If the training received in acquiring some other degree is in character as good as that required in obtaining a Bachelor of Arts degree, it would be its equivalent, otherwise not; and if 120 semester hours are expended in pursuing training which in character would be as good as the training required to obtain a Bachelor of Arts degree, from an educational stand-point, those semester hours would be the equivalent of that degree, otherwise not. What is necessary to constitute one or the other, the equivalent of a Bachelor's degree, is necessarily left to the discretion of the state board of education, which has the final approval of the supervisor under the new as well as under the old law. The only

limitation set by the statute in that respect is that the degree or its equivalent must be from a fully accredited college or university.

You also ask "if the superintendent prefers not to have a rural supervisor, would she have the right to make such a decision if the county board desires that there be a supervisor?" The new law states: "Said board may employ a rural school supervisor at the expense of the county, which supervisor **shall be nominated by the county superintendent of schools and** must be approved by the state board of education." Since, under this language, the superintendent has the right to nominate, if the underlined portion of the above quotation *{*38}* is valid, the superintendent may block any appointment by merely refusing to nominate, regardless of the wishes of the board.

However, I have very great doubts as to the validity of that provision. The bill as originally drafted did not contain the portion underlined in the above quotation, and the title was limited to the two changes shown in italics. Hence the title in the original draft read:

"Amending Section 5 of Chapter 119, Laws of 1931, As Amended by Section 1, Chapter 114, Laws of 1937, So As to Provide For Qualifications Of Rural School Supervisors, And Prohibiting Their Engaging In Political Activity."

Before introduction the bill was re-typed by someone, without any change in the title, and the words "shall be nominated by the superintendent of schools" were inserted in the re-typed bill, but not underscored as new matter although such underscoring was required by Section 50 of the rules of the Senate. This underscoring was omitted despite the fact that the other new matter immediately following was so underscored. As stated above, the title was not changed to conform with the bill as re-typed, and it gives no indication of any purpose to amend the statute in that particular.

While the title of the bill may be very general and very brief, and need not be in any sense an index, still its function is to apprise the Legislature of the purposes intended to be accomplished by the bill. The Constitution by Article 4, Section 16, provides that "the subject of every bill shall be clearly expressed in its title * * * but if any subject is embraced in any act which is not expressed in its title, only so much of the act as is not expressed shall be void." The Supreme Court has held that the purpose of that provision is "to prevent surprise or fraud upon the Legislature by means of provisions in bills of which the titles give no intimation, and which therefore might be overlooked and carelessly or unintentionally adopted." State vs. Ingalls, 18 N.M. 211.

Here the title purports to give the Legislature notice of two intended changes in the old law. The underscored portion of the bill likewise gives notice of only two changes. Under the circumstances, that portion of the act not covered in the title giving the superintendent the right to nominate is, in my opinion, violative of that provision of the Constitution above referred to and therefore void.

The change sought to be made by that portion of the bill may be highly desirable. It is incredible that anyone would practice subterfuge to obtain such a change. The introducer of the bill probably was as innocent of the hidden change as the rest of the members of the Legislature.

Indeed, the person who re-drafted the bill may have been innocent of any design to conceal. No charge of that nature is intended here. Nevertheless, the reason for the constitutional rule above referred to would seem to apply with greater force where, as here, the possibility for surprise on the part of the Legislature is increased by the bill's purporting to show all changes in underscoring or italics, when as a matter of fact it did not.

By: A. M. FERNANDEZ,

Asst. Atty. Gen.