

**Opinion No. 39-3288**

September 27, 1939

**BY:** FILO M. SEDILLO, Attorney General

**TO:** Mr. C. R. Sebastian, State Comptroller, Santa Fe, New Mexico.

{\*109} In your letter of September 26 you state:

"I have a question pertaining to the Socorro County Schools wherein there are only two high schools in Socorro County, one being the municipal school district of Socorro, and the other being the La Joya Rural Independent School District. In order that the children of the districts other than these two may avail themselves of the high school facilities, it is necessary that bus routes be established from these rural school districts to one or both of these high schools.

Will you please give me your opinion as to who has the authority under the law to designate the school routes necessary to transport these high school students from the rural districts who do not have high schools. In this respect I refer you to statutes 120-2502 and 120-2503, New Mexico Supplement 1938."

Section 120-2502, 1938 Supplement, referred to by you provides that "the governing boards of education of the districts **within or through which** transportation routes are to be established shall have power, with the approval of the state board of education, to designate and establish transportation routes within their respective districts \* \* \*."

The next section, 120-2503, provides, "in the event that any such transportation route shall serve the pupils of two or more districts the governing boards of education of the districts involved shall, jointly, enter into such contract with the transportation agent." Section 120-2502 also provides for the designation of routes on or before August 15 of each year and that "no change in such routes shall thereafter be made except by and with unanimous consent of the board or boards affected and with the approval of the state board of education, **or except by order of the state board of education.**"

Article XII, Section 6, of the State Constitution provides that the state board of education "shall have **the control, management and direction of all public schools**, under such regulations as may be provided by law."

The first consideration in establishing school routes is the welfare and convenience of the children. If necessity exists, as your letter clearly indicates it does, for the establishment of routes from rural districts into a municipal or independent school district, which would serve only the rural districts, {\*110} it is my opinion that the county board of education with the approval of the state board of education would have the right to establish such routes. Efficiency and convenience may require, however, that such routes be so established as to serve both the local districts and the municipal or

independent district, and in such cases the two or more boards of the county and municipal or independent district to be served clearly have the right to establish them with the approval of the state board of education.

In the latter case, however, the two or more boards involved might not be able to agree upon the routes to be established creating thereby a stalemate which would only redound to the prejudice of the children. It cannot be said that our law is so deficient that a situation such as that must be allowed to remain and continue. The statutes above referred to were designated to give as much voice as possible to the local county, municipal or independent school boards, but it was not intended, in my opinion, to deprive the state board of education of the superior control over public schools with which it is charged by the constitutional provision above referred to.

Indeed, Section 120-2502 clearly gives the local boards authority to propose establishment or change of routes only up to and including August 15, and thereby it gives complete authority to the state board of education to make such changes as it may desire upon its own order.

This but reasserts the superior control and management of the state board of education in the interests of the children of the state. After considering the proposed routes, if any, or if confronted with the inability of two or more boards to agree on routes, it cannot abdicate its authority and responsibility under the constitution and the statutes above referred to, but must exercise it by approving the routes, or disapproving those and establishing others when satisfactory ones are not proposed by August 15th of each year. In either event the responsibility rests squarely on the state board.

By: A. M. FERNANDEZ,

Asst. Atty. Gen.