

Opinion No. 41-3681

January 9, 1941

BY: EDWARD P. CHASE, Attorney General

TO: Mr. James C. Enloe Attorney at Law Socorro, New Mexico

{*21} This will acknowledge receipt of your letter of January 6 wherein you request an opinion on the following questions:

"Is the authority of a Board of County Commissioners broad enough to permit them to employ a private auditing firm to audit the records of a former Board of County Commissioners?"

Does a Board of County Commissioners have the authority to subpoena the members of a former Board of County Commissioners to appear before them to answer questions as to the whereabouts of certain alleged county property which was never turned over to the new Board?"

May a County Board of Education refuse to pay a clerk chosen by the County Superintendent of Schools when there has already been a provision made in the budget for such clerk?"

As to the first question, it is my opinion that the board of County Commissioners has authority to employ a private auditing firm to audit the records of a former board of county commissioners provided that they first receive the approval of the State Comptroller in accordance with the provisions of Chapter 233, Section 4 of the Laws of 1937. Of course, in addition to receiving the approval of the State Comptroller, it is necessary that the county have sufficient money in its budget to pay for the said auditing.

With respect to question two, it is my opinion that the board of county commissioners has no authority to subpoena members of a former board of county commissioners to appear before them to answer questions, etc. This power is not an inherent power of a board of county commissioners, and because of this, it is necessary that specific authority be found in the statute allowing such a body as a board of county commissioners to subpoena witnesses before they shall have any such authority. There is no statute in New Mexico granting a board of county commissioners such power, and it is therefore my opinion that they have no such power.

With reference to question three, it is my opinion that if the county board of education has given their consent to employ said clerk, as provided in Chapter 120, Section 405 of the 1929 Compilation, then the clerk is entitled to pay, and the county board of education cannot refuse to pay. On the other hand, if all of the provisions of Chapter

120, Section 405 of the 1929 Compilation have not been met, in all probability the county board of education may refuse to pay said clerk.

Trusting that the foregoing sufficiently answers your inquiries, I am,

By HOWARD F. HOUK,

Asst. Atty. General