

Opinion No. 41-3682

January 9, 1941

BY: EDWARD P. CHASE, Attorney General

TO: Honorable John E. Miles Governor of New Mexico Santa Fe, New Mexico

{*21} This will acknowledge receipt of copy of letter dated January 3, 1941, written to you by Clarence E. Hinkle, Esq., of the law firm of Hervey, Dow, Hill & Hinkle, Mr. Hinkle having been heretofore appointed by you as Chairman of the Committee of Taxpayers looking to the matter of the financial {*22} condition of our public schools.

Said letter requests the Executive Office to obtain the opinion of this office relative to the following questions:

"First: Has the Legislature the right to abolish the office of County School Superintendent, and to provide for the appointment of a Rural Superintendent of Schools by the County Board of Education?"

"Second: Has the Legislature authority to consolidate all Rural School Districts for all purposes without the proposition of consolidation being voted upon by the electors of the Districts affected, if provision is made that the respective Districts having a bonded debt shall retain their identity for the purpose of making levies for debt service until the bonds are paid?"

In answer to your first question, we observe that by the Laws of 1907 (Section 4832, 1915 Codification) a county superintendent of schools for each county existed at the time of the adoption of the Constitution. Section 2 of Article X of the New Mexico Constitution, to which Mr. Hinkle has called our attention, provides in effect that "all county officers shall be elected for a term of two years". Nowhere in the Constitution are county officers designated, and it is to be presumed that the Constitutional Convention had in mind county officers then existing.

The mere fact that the district over which the powers of an officer extend is coterminous with the county, does not necessarily constitute him a county officer. 15 C. J. 482; and in view of Section 6, Article XII, placing complete control, management and direction of all public schools in a state board raises a doubt as to whether or not a county school superintendent is a county officer. Section 6, Article XII of the Constitution. However, in that same section it is provided that as a member of the Board "a county superintendent of schools" shall be appointed, thereby recognizing county school superintendents by name in the Constitution. This alone might not be sufficient to designate him as a county officer, if he, in fact, is not a county official.

However, in 1923 (Section 401 of Chapter 148, Laws of 1923) the Legislature attempted to abolish the elective office of county superintendent and to provide for the

appointment of one, the Legislature specifically referring to Section 6 of Article XII as their authority so to do. This statute apparently has never been construed by the courts, but this office in two opinions, one by former Assistant Attorney General John W. Armstrong, in Opinion 3764 dated March 13, 1924, held the statute to be unconstitutional on the grounds that the county superintendent of schools was, under the Constitution, an elective office. Later, on August 3, 1926, by Opinion No. 3904, written by Assistant Attorney General Robert C. Dow, the same holding was made by this office.

The Legislature apparently acquiesced in the opinion of this office at that time, for in 1925 by Chapter 64, Section 1, Laws of 1925, the Legislature amended the statute above referred to, which attempted to make the county school superintendent an appointive office, and provided for the election of a county school superintendent. As above stated, the courts have never interpreted this particular section of the Constitution.

In view of the foregoing, it is my opinion that the answer to question number one is "no".

With respect to your second question, we can see no reason why rural school districts may not be consolidated or changed in any manner by authority of the Legislature. The aforesaid Section 6 of Article XII clearly states that the public schools, which necessarily would include the boundaries of school districts and their government, are in the complete control of the state. The Legislature in the past has made many different arrangements with respect to the creation, consolidation, and change of school districts, and its right so to do, so far as we know, has never been challenged. Of course, we suggest in the passing of statutes for the change or consolidation of school districts that care must be exercised so the clause prohibiting the impairment of contracts is not violated.