

## Opinion No. 42-4050

March 20, 1942

**BY:** EDWARD P. CHASE, Attorney General

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

{\*172} In your letter dated March 17, 1942, you enclose a warrant numbered 536, issued by the Board of Education, Sandoval County, to Bernalillo Merchantile Company in the sum of \$ 270.24 for supplies purchased by the County Board of Education and to be charged to the Administrative Fund of the present fiscal year, said warrant being supported by Voucher 166.

You state that the County Superintendent, as Secretary of the County Board of Education, refuses to attest to the signature of the president of the Board. The warrant shows on its face to be signed by the president and attested by three (3) board members. You inquire whether a warrant issued in this manner is legal.

Under Section 120-618, 1929 Compilation, it is provided in part as follows:

"All school funds to the credit of any district shall be kept by the county treasurer and withdrawn only by warrant or voucher of the proper board of education, as and when the expense matures."

No provision is made for the manner of signing and countersigning a warrant by a school board, but the only requirement is that such warrant or voucher be issued by order of the board of education. The ordinary manner of executing warrants, as shown by the warrant itself, is signature by the president of the Board of Education, attested by the secretary. However, in the absence of express legislative direction as to the manner of signature, any signature that shows the majority of the Board has concurred in the order for the issuance of the warrant will be sufficient to make the warrant legal.

In 56 C. J., Section 675, page 563, we find this language:

"The warrant or order must be drawn in the form prescribed by statute, upon or to the proper board or officer, signed and countersigned as required; but it need not bear a seal, unless the statute so requires."

In the case of *Asbill vs. Martin*, 84 S Car. 274, 66 S. E. 297, the Court held that when payment of a warrant is authorized by the board of education, failure of the superintendent to attest the warrant does not render the same void when the warrant is signed by the president of the board and a majority of the members".

It is to be noted that the law expressly provides the persons who are to sign county warrants. Under Section 33-4237, 1929 Compilation, such warrants are required to be

signed by the chairman of the board of county commissioners and attested by the county clerk.

However, in the absence of such express direction by the legislature as to the manner of signature, I am of the opinion that a warrant may be signed by the president and attested by a majority of the members of the county board of education, and that such warrant is valid regardless of the fact that it is not attested by the secretary and does not bear the seal of the County Board.

By C. C. McCULLOH,

Asst. Atty. General