

Opinion No. 43-4317

June 21, 1943

BY: EDWARD P. CHASE, Attorney General

TO: Horry Payne, M. D., District Health Officer, Santa Fe, New Mexico

We have your letter of June 17, 1943, wherein you request an opinion concerning whether the Diphtheria Immunization Law, Chapter 50, Session Laws of 1943 and the Smallpox Vaccination Law, Section 71-301, Sub-section 8, 1941 Compilation, (Section 14, Sub-section 8, Chapter 39, Session Laws of 1937) applies to children in private schools as well as those in public schools.

The material portion of Chapter 50, Laws of 1943 reads as follows:

"It shall be the duty of the County School Superintendent of each county in this state to see that all children in his county of school age are immunized * * *. To this end it shall be the duty of each teacher of the public schools in this state to see that the children * * *, under his control, have been so immunized, and it shall be unlawful for any child * * * to attend school, or for any teacher to allow such child in any school house unless so immunized, unless he shows a proper certificate that he has been exempt."

(Section 71-301, 1941 Compilation has similar wording.)

It is noted that this wording does not provide any exemption for children in private schools, and specifically provides that it applies to all children in each county of school age. It is made the duty of the County School Superintendent to see that all children in his county are vaccinated. The teacher of the public schools are given certain duties pertaining to the enforcement of this law that of necessity could not be legally enforced upon teachers of private schools.

However, this fact does not exempt students of private schools from the above mentioned statutes, and under the specific wording of the statute, it shall be unlawful for a child to attend any school unless complying with the statute, and it is further unlawful for any teacher to allow a child within **any** school house who has not complied with the statute. These provisions are equally applicable to public and private schools. The only distinction made between the two types of schools is that a teacher of a private school does not have the duty under the statute to see that the children under his control have been successfully vaccinated. However, it is unlawful for a teacher of a public or private school to allow an unvaccinated child to attend school, or to allow such a child within any school house, either public or private.

Hoping that the above fully answers your question, I remain

By HARRY L. BIGBEE

Asst. Atty. General