

Opinion No. 43-4410

November 16, 1943

BY: EDWARD P. CHASE, Attorney General

TO: Mrs. Georgia L. Lusk, Superintendent of Public Instruction, Department of Education, Santa Fe, New Mexico. Attention Mr. Floyd Santistevan, Assistant Superintendent of Public Instruction

I have your letter of November 12, 1943, wherein you inclose a letter from Superintendent F. L. Woodman, of Magdalena, New Mexico, in which he requests information concerning the dismissal of school children when they refuse to be vaccinated for designated diseases.

I call your attention to Section 71-301 (8) of the New Mexico 1941 Compilation, which provides:

"It shall be the duty of the school superintendent of each county to see that all children in his county of school age, are vaccinated against small-pox and to that end **each teacher of a public school shall see that the children under his control have been successfully vaccinated, and it shall be unlawful for any child to attend school or for any teacher to allow such child within any schoolhouse, unless so vaccinated, or showing proper certificate that it has been so vaccinated.** Such teacher shall make report of the number of children whom he has caused to be vaccinated and those who have presented proper certificates, that they have been vaccinated, to the county school superintendent at the beginning of the school year, and as often thereafter as he may deem necessary, **together with the report of the names of any parents who refuse to allow their children to be vaccinated and any person who shall refuse or neglect to have his or her children vaccinated according to the law shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be fined not less than ten (\$ 10.00) nor more than one hundred dollars or imprisoned in the county jail not exceeding one hundred (100) days.**"

Section 71-301 (1) of the New Mexico 1941 Compilation provides:

"Any person * * * violating any state health law * * * or the district health officers to enforce any state health law, where the punishment is not otherwise specifically prescribed by law, shall be punished by a fine of not less than twenty dollars (\$ 20.00) nor more than one hundred dollars (\$ 100.00) or imprisonment in the county jail for not less than twenty (20) nor more than ninety (90) days, or by both such fine and imprisonment in the discretion of the court."

It is noted that it is the duty of the teacher to see that all children under his control are vaccinated, and it is unlawful for any teacher to allow a child within any schoolhouse unless so vaccinated or showing proper certificate that he has been vaccinated. If a

teacher should fail to perform the specific duty imposed upon him the penalty provision set out in Section 71-301 (1) would apply.

In view of the specific and mandatory language of this statute it is the duty of a teacher, and a teacher will have the authority, to prevent any child from attending school who has not complied with our vaccination laws. No formal procedures are required to prevent an unvaccinated child from attending school.

Hoping that the above fully answers your question, I am,

By HARRY L. BIGBEE,

Assistant Attorney General