

## Opinion No. 44-4475

March 9, 1944

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

**TO:** Mrs. Georgia L. Lusk, Superintendent of Public Instruction, Department of Education, Santa Fe, New Mexico

I have your letter of March 4, 1944, wherein you state:

"In line with the enclosed letter, will you please render an opinion as to whether or not a legal transfer of school funds can be made from the rural supervisor's fund to a visiting teacher's fund when there is a disagreement existing between the superintendent of the county and the county board as to the selection and appointment of a person for the position of rural school supervisor."

By considering the enclosed letter, it is noted that a County Board of Education has employed a so-called "visiting teacher" instead of a rural school supervisor, and is using a rural school supervisor's salary fund to pay the visiting teacher's salary.

In view of the above facts, I find it unnecessary to consider the question concerning whether or not a legal transfer of school funds can be made from the rural supervisor's fund for the reason that it is my opinion that under the statutes of this state, the County Board has no power to hire a visiting teacher instead of a rural school supervisor. It would appear, from the facts set out, that the visiting teacher is merely another name for a rural school supervisor, and that the duties and functions of the visiting teacher are identical to the duties and functions contemplated by the statute for a rural school supervisor. Therefore, the visiting teacher must be considered a rural school supervisor.

Section 55-807 of the N.M. 1941 Compilation provides:

"Said board (referring to the County Board of Education) may employ a rural school supervisor at the expense of the county, **which supervisor shall be nominated by the County Superintendent of Schools, and must be approved by the State Board of Education.** \* \* \*"

It is my opinion that this statute is mandatory, and that a County Board of Education only has the power to hire a rural school supervisor by complying with the provisions of the above quoted statute.

In the absence of a specific statute concerning a rural school supervisor a County Board, under its general power to hire "teachers", could probably hire a "visiting teacher"; however, since the statute specifically provides not only the qualifications of a rural school supervisor, but also the manner in which they are to be appointed, it is my opinion that anyone hired to perform the functions contemplated by the statute to be

performed by a rural school supervisor must meet the qualifications provided in the statute and must be appointed as provided by statute.

Hoping that the above fully answers your inquiry, I am

By HARRY L. BIGBEE,

Asst. Atty. General