

Opinion No. 47-5110

December 4, 1947

BY: C. C. McCULLOH, Attorney General

TO: Mr. Claron E. Waggoner District Attorney Socorro, New Mexico

{*115} This will acknowledge receipt of your letter of December 2, 1947 in which you request the opinion of this office as to whether or not there are any legal objections to the holding of public dances for profit in the school gymnasium when given by other than the school.

Section 55-907, N.M.S.A. 1941 Compilation provides that the municipal school boards shall have the same powers and duties respecting its districts and schools as are possessed by county boards of education.

Section 55-807, N.M.S.A. 1941 Compilation provides that county boards of education shall have supervision and control over all rural schools and of sites, buildings, and equipment of said schools and districts.

It follows that the municipal school board has full control over whether they will permit a public dance for profit in the school gymnasium.

There is a considerable conflict of authority as to whether the school buildings may be used for public dances. The rule is stated in 47 A.J., page 344, sec. 67 as follows:

"While there appears to be considerable conflict in the reported cases as to whether school property may be used for other than school purposes, or, if so, as to what uses are permissible, there is a "liberalizing tendency in favor of extending permissible uses. In determining the question, the courts may be governed by the wording and import of statutes prescribing the powers and duties of those charged with the care of school property, or, if the statute is general in nature, by considerations of public policy, depending largely on the attitude of the taxpayers in the district. Other considerations affecting the result may be found in the changing times, or in the historical recognition of the propriety of devoting school property to certain uses."

The weight of authority seems to be that a school building may be leased to organizations for the purpose of holding dances out of school {*116} hours where such use does not interfere with the proper conduct and management of the school or harm the buildings or other property of the district. (See Annotation in 86 A.L.R., page 1175.)

The cases which hold that leasing school buildings for a public dance is not authorized, do so on the basis that taxation is invoked to raise funds to erect the building and that taxation is illegitimate to provide for any private purpose. Other cases which hold to this latter view do so on the ground that it is against public policy.

In view of the fact that we have no statute prohibiting the use of school buildings for a public dance and in view of the fact that the municipal boards of education are given full supervision and control of school buildings and equipment, it is my opinion that a municipal school board of education may, if it so desires, lease a school building or permit the use of same for the purpose of a public dance for profit.

By WILLIAM R. FEDERICI,

Asst. Atty. General