

Opinion No. 49-5234

August 2, 1949

BY: JOE L. MARTINEZ, Attorney General

TO: Charles L. Rose Superintendent of Public Instruction Santa Fe, New Mexico

{*69} Reference is made to your letter dated July 28, 1949, wherein you make inquiry as to what action the incorporated town of Loving, New Mexico, may take in order to change the classification of its school from rural to a municipal school.

It has been disclosed that the Village of Loving was recently incorporated under the laws pertaining thereto. You are advised that the latter part of Sec. 55-813, New Mexico Statutes, 1941 Compilation, provides for a reclassification of schools. The statute reads as follows:

"Where the average daily attendance for the last two preceding school terms is less {*70} than 100 in school districts within incorporated cities, towns and villages, including the territory thereto annexed for school purposes, and such vacancies have been certified by the county school superintendent to the county board of education, the said school district within such incorporated cities, towns and villages, including the territory thereto annexed for school purposes, shall be classed and governed as rural districts and be within the jurisdiction and control of the county board of education, and if and when such districts shall have an average daily attendance of 100 or more pupils for two or more consecutive school terms and such fact shall have been certified to the state superintendent of public instruction, such districts shall become municipal districts upon the certification of the state superintendent of public instruction, and shall be governed in all respects as municipal school districts."

You will note that the latter part of the above statute reads:

"* * * and if and when such districts shall have an average daily attendance of 100 or more pupils for two or more consecutive school terms and such fact shall have been certified to the State Superintendent of Public Instruction, **such districts shall become municipal districts upon the certification of the State Superintendent of Public Instruction**, and shall be governed in all respects as municipal school districts."
(Emphasis Mine)

Further quoting § 55-901, New Mexico Statutes Annotated, 1941 Compilation:

"Except as otherwise provided in § 55-813 (quoted above), cities, towns and villages, including territory annexed thereto for school purposes, shall be known as municipal schools and districts."

From the above it is the opinion of this office that the rural school located in Loving and now administered under the supervision of the County Superintendent should be reclassified upon proper certification by the State Superintendent of Public Instruction, and be classified as a municipal school. The administration of the school should then be governed by the laws pertaining to municipal schools creating a municipal board of education. Sec. § 55-902, New Mexico Statutes Annotated, 1941 Compilation.

This office is appreciative of the fact that the method of the classification of schools was made somewhat confusing by § 55-909 of the New Mexico Statutes Annotated, 1941 Compilation, which statute was enacted by the 1937 Legislature. This act provides for classification by election upon a petition bearing 10% of the qualified electors of the municipality **and the territory annexed thereto for school purposes.**

It is held here that the above statute is not applicable for the reason that the question of a municipality annexing territory is not involved in the present case. See Attorney General's Opinion No. 3738, dated March 12, 1941.