

Opinion No. 49-5242

August 18, 1949

BY: JOE L. MARTINEZ, Attorney General

TO: Mr. J. D. Hannah State Comptroller Santa Fe, New Mexico

{*81} In compliance with your request as to the authority of the District Judge and the chairman of the board of county commissioners to remove a member of the county board of education, you are advised that such authority of arbitrary removal is not vested by law in the District Judge and the chairman of the board of county commissioners, or either of them. § 55-806e of the New Mexico 1941 Compilation, pocket supplement, provides as follows:

"Any appointed member of the county board of education may be removed at any time by the appointing power of the county affected, for conviction of any felony, or of any misdemeanor involving moral turpitude; failure, neglect or refusal to discharge any duty devolving upon the officer by virtue of his office; knowingly demanding or receiving illegal fees as such officer; failure to account for money coming into his hands as such officer; or gross negligence in discharging the duties of his office. If, by reason of removal, as herein or otherwise provided by law, or for any other reason, a vacancy should occur, the appointing power shall select a successor to fill the unexpired term."

From the above, it is clear that a member or members of the county board of education may only be removed by the appointing power, which is composed of the State Superintendent of Public Instruction, the Chairman of the Board of County Commissioners and the District Judge, or a majority thereof, and such removal can be made only upon proper cause as required by the law.

It is, therefore, my opinion that removals under the law can be made only in accordance with the following procedure:

1. The appointing power must serve due notice on the member whose removal is requested, such notice to set forth the charges, or reasons for the removal, and a definite time and place of hearing to be held not less than ten days from the date of said notice.
2. Hearing to be held by the appointing power at the time and place set forth in said notice at which time the member whose removal is sought shall be entitled to attend, and if he desires, to be represented by counsel, and hear the evidence introduced against him in support of the charges; he shall have the right of cross-examination and the right to defend himself by answering the charges; submit evidence, including the testimony of witnesses.

3. The appointing power shall appoint one of the members as chairman to preside at such hearing.

4. The chairman, after all of the evidence has been introduced, shall render a decision in writing based on the law applicable, and the evidence introduced at the hearing.

It is my further opinion that {*82} the action taken by Judge Armijo in ordering the removal of Mr. Lopez, without a hearing, was arbitrary, not in accordance with the law and, therefore, invalid. The order being invalid, it is the opinion of this office that Mr. Lopez is still a qualified member of the county school board of Mora County.