

Opinion No. 49-5236

August 4, 1949

BY: JOE L. MARTINEZ, Attorney General

TO: R. H. Grissom Educational Budget Auditor Office of State Comptroller Santa Fe, New Mexico

{*72} Reference is made to your letter dated July 19, 1949, wherein you submit two questions in connection with the housing problem of teachers of the rural school located in district No. 31, San Juan County.

The facts disclose that the school building is located on the Indian Reservation, and is temporarily used by the state for school purposes by consent of the government. Houses are not provided for the teachers, although information discloses that vacant houses owned by the government could be made available. The government will not permit the teachers to occupy these houses because of possible occupancy by employees of the helium plant located on the reservation.

As a consequence the teachers employed have heretofore resided in small rooms in the rear of the school rooms, all located in the building used by the state, with the consent of the government, for school purposes.

Due to increased enrollment and an increase in teaching personnel it is now desired by the school authorities that proper housing facilities be made available to the teachers. The following questions have been submitted:

(1) Would it be legal to construct a teacherage, paid for by the school district, on federal land to which the school holds no title?

(2) If the answer is negative to the above, would it be legal to purchase house trailers in which the teachers might live, provided a fair rate of rent was charged for such trailers?

1. In answering the first question, it is my opinion that it would be very unwise to construct a teacherage, or any building, on land that does not belong to the state or the school district. The building would become affixed, a part of the realty, and title would eventually be vested in the government. You should endeavor to obtain title from the government to sufficient land for the erection of all necessary buildings. I have conferred with the attorney for the Land Office, who has suggested that state land might be traded for federal land. He has volunteered to cooperate in attempting to work out a permanent solution of your problem. This, however, will require time and presents no solution to the present emergency, which brings me to your second question.

2. I can see no legal objection to the purchase of house trailers for the teachers to live in at a fair rental. Proper consent should first be obtained from the agency for sufficient

ground space upon which the trailers may be placed. My authority for this conclusion is contained in Attorney General's Opinion No. 4734 dated June 7, 1945, in which it was held that school district No. 2 of Las Vegas had authority to enter into a contract to purchase a building for school purposes, subject to an existing five-year lease, the district thereby assuming the capacity of landlord.

You are also referred to Section 55-806a of the New Mexico 1941 Compilation, pocket supplement, which gives the county board of education power to contract, acquire and dispose of school property.

Under Section 55-807 of the 1941 Compilation, the county board of education is vested with the authority of the supervision of all rural schools and districts, and {*73} of sites, buildings, equipment and funds of said districts.