

## Opinion No. 51-5335

February 23, 1951

**BY:** JOE L. MARTINEZ, Attorney General

**TO:** State Department of Public Health Santa Fe, New Mexico. Attention: Miss Billy Tober, Director Division of Budgets & Finance

{\*11} In reply to your letter dated February 9, 1951, in which you request a new opinion on the question as to whether or not under our compulsory vaccination laws for small pox and diphtheria apply to children in private or parochial as well as in public schools, and second, you request an opinion on whether or not under our compulsory vaccination laws it is the duty and responsibility of the public health nurse, who works under the supervision of the Health Department even though she may be paid from county school funds, whether or not she has to do the vaccinating in private as well as parochial schools.

First, I want to point out that it is not the policy of this office to write new opinions when we concur with the opinions written by a former attorney general and in this case since the law is the same as it was when Opinion No. 4317 was written, we concur with that opinion which holds that the provisions of Sub-section 8 apply to all children in each county of school age, including those enrolling in private schools as well as those in public schools.

As to your second question, I call your attention to Section 71-321 of the 1941 Pocket Supplement, which reads as follows:

"71-321. Costs of immunization -- Payment by parents -- Immunization by district health officer -- Costs borne by state department. -- The immunization required in the next preceding section may be done by any licensed physician or under his direction and shall be paid for by the parents of such children when they are able to do so, but in case of their inability to pay for the same by reason of poverty, then such immunization shall be done by the district health officer, or under his direction, and shall be paid for by the state department of public health. Provided that no health officer who is employed to give his entire time to the duties of his office shall receive any fee or payment for performing the work required by this section, but in such case, the state department of public health shall defray the expenses {\*12} for the prophylactic agent and other supplies incurred by the district health officer in carrying out the provisions of this section."

You will note that this above mentioned section is mandatory and provides that the immunization shall be done by any licensed physician or under his direction and shall be paid for by the parents of such children when they are able to do so, but in case of their inability to pay for the same by reason of poverty, then such immunization shall be

done by the district health officer, or under his direction and shall be paid for by the State Department of Public Health.

Therefore, since under Opinion No. 4317, with which I concur, applies to children both in the public schools and parochial or private schools, it is my opinion that if the parents are not financially able to pay for costs of immunization, that the work done by the county nurse will have to be paid by the State Department of Public Health.

Trusting that this fully answers both of your inquiries, I remain,