

Opinion No. 51-5409

August 29, 1951

BY: JOE L. MARTINEZ, Attorney General

TO: Mr. Tom M. Wiley Superintendent of Public Instruction Santa Fe, New Mexico

{*112} This is in reply to your letter of June 12, 1951 in which you requested an opinion from this office concerning the use of some of the rooms of certain Negro school buildings for the housing of white students. You mentioned that it has come to your attention that in at least one specific instance on the East side of the State, the local school board would like to use one or two of these rooms for such a purpose. You ask whether such a procedure by a school board would violate any provision of the State Constitution or statutes.

The section of the New Mexico statutes authorizing segregation of Negro and Caucasian students in certain instances is § 55-1201, which reads as follows:

{*113} "Pupils who are residents of a district shall be permitted to attend school in the same regardless of the time when they acquired such residence, whether before or after the enumeration. Provided, that where, in the opinion of the county school board or municipal school board and on approval of said opinion by the state board of education, it is for the best advantage and interest of the school that separate rooms be provided for the teaching of pupils of African descent, and said rooms are so provided, such pupils may not be admitted to the school rooms occupied and used by pupils of Caucasian or other descent. Provided, further that such rooms set aside for the teaching of such pupils of African descent shall be as good and as well kept as those used by pupils of Caucasian or other descent, and teaching therein shall be as efficient. Provided, further, that pupils of Caucasian or other descent may not be admitted to the school rooms so provided for those of African descent."

As a preliminary, and perhaps gratuitous, observation, it is my opinion that the authority to provide "separate rooms" for Negro students is broad enough to cover the provision of separate buildings, so long as there is not thereby created a separate Negro school, in the sense of a separate administrative unit. In this connection, I am informed that the actual practice followed in areas where a policy of segregation is employed, is to provide occasionally for separate buildings, but never separate schools.

Turning now to your specific inquiry, it is my opinion, with certain reservations and conditions which I will discuss later, that the use by white students of certain rooms set aside for Negroes will not be violative of the Constitution or laws of New Mexico.

N.M.S.A. § 55-1201, quoted above, is the only constitutional or statutory provision which bears directly upon the problem which we are considering. It is the clear intent of this statute to give to the local school board the right to determine when conditions are such

as to justify the maintenance of separate school rooms for Negro students. Conceivably, a school board which had not previously employed a policy of segregation in its schools could initiate such a plan if it thought it to the best interests of a school to do so. Conversely, a school board could abolish such a policy any time it wished. Consequently, in my opinion, a school board may, in the exercise of its own judgment under this statute, increase or diminish from time to time the number of, or proportion of, school rooms set aside for Negro children. This would be clearly necessary in instances where population changes in an area increased or diminished the Negro population. It is my opinion that the portion of the statute which reads:

"Pupils of Caucasian or other descent may not be admitted to the school rooms so provided for those of African descent."

means that no such students shall be admitted so long as a particular room retains its character as one set aside for Negro students. Once a particular room is "reclassified" as one for students of "Caucasian or other descent", then the latter may move in. Conversely, the school board could designate a room formerly occupied by white students as one to be used by Negro children. All of the determinations of the local school board mentioned in this paragraph are, of course, subject to the approval of the State Board of Education.

What I have said in the foregoing paragraph is subject to one very important condition. In my opinion such a reclassification of rooms now designated for use by Negro students cannot be made if 1) overcrowding of the Negro students results, and 2) the resulting number of Negro students per {*114} classroom is appreciably greater than the number of white students per classroom. § 55-1201 provides that if separate rooms are provided, the teaching in the Negro rooms shall be as efficient as that in the White portion of the school. It is undebatable, I believe, that teaching can never be as efficient in an overcrowded classroom as it can in a room with a normal number of students. To repeat, it is my opinion that making a change which would overcrowd Negro students, but leaving white students uncrowded, would violate that portion of § 55-1201 which provides for "equal teaching" in the rooms set aside for Negro students.

I hope that this opinion has answered your questions on this subject.