

## Opinion No. 51-5469

December 21, 1951

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

**TO:** Leo C. de Baca, Chairman Phillip Ludi, Superintendent Carmen C. Gallegos, Secretary Las Vegas Town School Board Las Vegas, New Mexico

{\*180} This is in reply to your letter of December 4th directed to Honorable Jose E. Armijo, District Attorney, which Mr. Armijo has forwarded to this office for reply. In your letter you requested that he obtain the opinion of this office on four questions of concern to your Board and school officials.

The first question was whether there is any legal authority in the State Board of Education which would empower it to order the closing of a high school. I assume this question to refer to the action of the State Board in ordering the closing of the Town of Las Vegas High School.

"Administrative boards, commissions and officers have no common law powers, their powers are limited by the statutes creating them to those conferred expressly or by necessary or fair implication." 42 **Am. Jur. 317.**

"It has been generally stated that it is the duty of school officers to administer the affairs of the corporation as directed by statute in the exercise of such power and authority as are vested in them. As in the case of school districts, such officers have no powers other than those conferred by the legislative act either expressly or by necessary implication, and doubtful claims of power are resolved against them." 47 **Am. Jur. 324.**

In the light of the foregoing general rules of law, I have examined our New Mexico statutes thoroughly to determine what specific powers the State Board of Education may have been given by our Legislature which would empower it to order the closing of a particular school.

Section 55-1901 of the N.M.S.A., 1941 Comp., makes it mandatory for the State Board of Education to make a survey annually in every county to determine the feasibility of making consolidations. This section sets forth also the requirement that when average daily attendance drops below certain minimums the children shall be transported to the nearest schools having facilities for them unless the Board shall find it uneconomical to so transport them or that facilities are not available for them. Since this section sets forth specific standards and conditions upon the exercise of this power to close schools, the board must not depart from those standards in making its determination.

The State Board, under § 55-1903, is given power to consolidate school districts. The pertinent portion of that section reads:

"\* \* \* when the state board of education shall determine and make definite findings at the conclusion of any survey made under the provisions of this act (§§ 55-1901 -- 55-1904) that substantial economies can be effected and the educational standards raised by the consolidation of any two (2) or more school districts, said board may order the consolidation of such districts."

By necessary implication this statute gives the Board authority to order the closing of any school not needed after the ordering of a consolidation.

Other than as set forth in the two statutes which I have cited I can find no authority in the State Board of Education to order the closing of a school.

Your second question was whether the municipal Board of Education or the School Superintendent has the authority under the statutes *{\*181}* to establish the Las Vegas High School again.

Section 55-1001 N.M.S.A. 1941 Compilation states:

"Any school district which may hereafter have twenty (20) or more eighth grade graduates enrolled for high school work, may establish and maintain a high school therein upon the filing of proper certificate with the secretary of the county board of education by the county school superintendent; Provided, however, that high schools establish at the time this act takes effect and having an average daily attendance of eight (8) or more regularly enrolled high school pupils may be maintained and budget allowances therefor shall be made."

This section is clear as to what the conditions and terms for establishment of a high school must be. I can find no other enactment or provision of law which would controvert or in any way limit the authority to establish a high school as conferred by § 55-1001. Should the number of eighth grade graduates in the municipal district enrolled for high school work be in accordance with the statutory requirement and provided that the Superintendent of Schools makes proper certification as required, the Municipal Board could, in my opinion, establish a high school.

The third question which you ask was whether the State Board of Education will be required to furnish the students with textbooks should the Municipal Board re-establish the high school. The language of § 55-1709, which states "Said free text books shall be distributed to the children of this state attending schools in this state," is strong enough language to indicate that the Legislature intended that the State School Board be required to furnish all students with text books.

Section 55-1706 gives the formula for establishing school book credits and provides that each school unit is to share in the total appropriation for text books in such proportion as the unit's average daily attendance bears to that for the whole state. Since the Las Vegas Town Schools text book credit would be based on the A.D.A. for all schools in the district a portion of that credit for text books would be directly attributable to the high

school students. The Superintendent of Schools could requisition books for the high school students and the State Board would be required to supply them so long as the books requested were within the district's budget and in accordance with the required standards.

Your final question was whether or not the State Board of Education would be required to consider the average daily attendance at your high school should it be reestablished in determining the amount to be distributed to San Miguel County from the State School Equalization Fund. Section 55-633 (a) N.M.S.A. 1941 Compilation states the formula for primary distribution and § 55-636 sets forth the formula for secondary distribution of the State School Equalization Fund. Both formulas call for a proportional distribution based on average daily attendance figures.

Section 55-638 N.M.S.A. 1941 Compilation sets up the standards for reporting average daily attendance requiring that each District Superintendent report the attendance "of all schools under his supervision." The foregoing statutes concerning distribution of school funds are specific and leave nothing to the discretion of a school district board or to the State Board of Education.

It is my opinion that the State Board of Education would have no choice but to consider the average daily attendance figures of all the public schools, including high schools, in calculating the sums to be distributed from the School Equalization Fund to San Miguel County and determining the sums to be distributed within the County to the various school districts.

{\*182} In summary it can be stated that in all fields of school administration the State Board is granted broad supervisory powers and it has necessarily implied authority in other matters affecting the schools. However, on the question of closing schools, since the Legislature has given them specific directive as to how and when this may be done there can be no presumption that there is any implied power in the Board to act other than as the statutes direct. The same is true as to the allocation of school funds and of school books.

Where the Legislature has specifically directed them to act and prescribed formulas as to how they should act the State Board must comply and cannot go beyond the bounds of the statutes.

I trust that the foregoing will answer your inquiries.