

Opinion No. 52-5592

September 18, 1952

BY: JOE L. MARTINEZ, Attorney General

TO: Mr. J. T. Reece Director of Transportation Department of Education Santa Fe, New Mexico

{*303} You have requested an opinion from this office as to the effect of the judgment of contempt entered by Judge Anderson against the Rio Arriba County Board of Education upon the entire matter of transportation of non-public school children provided by counties pursuant to the 1951 law passed by the last Legislature.

Your attention is invited to the terms of the original injunction, with respect to transportation of parochial school students which reads as follows:

"That the defendants named and designated in paragraph twelve of this judgment relating to the first cause of action be and each of them are hereby permanently enjoined and restrained from permitting, allowing or consenting to the transportation of pupils attending parochial schools by transportation furnished by the State of New Mexico in connection with the furnishing of school bus transportation."

In view of the fact that the Rio Arriba County Board of Education contended during the contempt hearing that the transportation provided non-public school children in Rio Arriba County was provided by the Rio Arriba Board of County Commissioners, pursuant to the 1951 law authorizing counties to provide transportation for non-public school children, as provided in that law, it appears that the ruling of the court until the matter can be passed upon by the Supreme Court, leaves no alternative for the Rio Arriba Board of Education but to desist from any activity in connection with transportation furnished non-public school children by the county.

It appears further that while other county boards of education were not directly involved in the contempt hearing, the spirit of the judgment demands that such other county boards of education desist from any activity whatsoever in connection with transportation of non-public school children by counties pursuant to the 1951 law.

The 1951 law, passed by the last Legislature, authorized the transportation of non-public school pupils by counties. This law reads as follows:

{*304} "Provided further, that each county may furnish transportation from general funds, and not out of any funds or taxes raised or levied for educational purposes or appropriated in aid of the State public schools, to supplement the present school bus transportation system for the aid and benefit of all pupils attending school in compliance with the compulsory school attendance laws of the State of New Mexico, upon the same

terms and in the same manner and over the same routes of travel as is provided for pupils attending the State public schools."

By virtue of that law counties are permitted to furnish transportation to non-public school pupils. In this connection, however, it is my opinion that if any of the counties throughout the state, pursuant to the 1951 law, are providing transportation to non-public school children, the various county boards of education in such counties should leave the matter of such transportation entirely to the boards of county commissioners, and it is further my advice that the various county boards of education act in no capacity in connection with such transportation furnished by any such counties, either as the agents or instrumentalities of such county commissioners in connection with such transportation.

I trust that this gives you the desired information.