

## Opinion No. 53-5810

September 4, 1953

**BY:** RICHARD H. ROBINSON, Attorney General

**TO:** Honorable Tom Wiley Superintendent of Public Instruction Department of Education Santa Fe, New Mexico

{\*218} This is in answer to your request for an opinion relative to school attendance of young married persons who come within the compulsory ages, wherein you ask the following two questions:

1. May married pupils be eliminated from school attendance if they are of legal school age?
2. Will the law be fulfilled if night classes were set up for these pupils?

In answer to the first question this office in an opinion dated February 19, 1936, addressed to Mr. H. R. Rodgers, Superintendent of Public Instruction, Santa Fe, New Mexico, stated in substance that the Attorney General found nothing in the law which provides that children may be excluded from school because they are married. Children above the compulsory age of attendance in public schools may or may not be permitted to attend school in the discretion of the local governing board. Laws 1923, Ch. 138, § 1203, which appears as § 55-1203, 1941 Compilation, was amended by Laws 1947, Ch. 28, § 1, to require children to attend public schools until they have reached their seventeenth birthday, which extends compulsory age. There have been no other pertinent changes in this law and this office concurs with the results reached in the prior opinion.

In relation to whether the law would be fulfilled if night classes were set up for these pupils, § 55-1301, et seq., N.M.S.A., 1941 Comp., as amended, provides for setting up night schools for adults who are illiterate or semi-illiterate and who wish to attend school at night. There is no provision in the law for setting up night classes for married persons coming within the compulsory ages. It is therefore the opinion of this office that married pupils who have not reached their seventeenth birthday may not be excluded from day time regular instruction and that night courses could only be instituted for such pupils who voluntarily agreed to such instruction.

We trust this is of some assistance to you in this matter.

By: William J. Torrington

Assist. Attorney General Chief, Division No. 2