

Opinion No. 55-6073

January 10, 1955

BY: RICHARD H. ROBINSON, Attorney General

TO: Mrs. Georgia L. Lusk Superintendent of Public Instruction Department of Education,
Santa Fe, New Mexico

Mr. Tom Wiley, your predecessor as Superintendent of Public Instruction, asked the opinion of this office upon the following questions which are raised in connection with interpretation of Chapter 139, Section 89.1, Laws of 1953.

1. Upon whom does the responsibility rest for enforcement of requirement that school children walk between designated and marked safety lanes in and about the various schools?
2. Whose responsibility is it to maintain guards on cross walks over highway not abutting school grounds?
3. May mechanical devices be considered "guards" within the meaning of the statute?
4. Do patrol boys fulfill the requirement of the law where the term "guards" is used?
5. If adult guards are required, or even if not required, and they are employed, may they be legally paid out of school funds?

The pertinent provisions of Section 89.1 are the following:

"School Crossings. -- (a) There shall be established no more than one marked cross walk over any one highway bordering a school or the grounds adjacent thereto and all children crossing such highway shall be required to do so within the marked cross walk. The State Highway Commission with respect to state highways and local authorities with respect to streets under their jurisdiction, by and with the advice of the local superintendent of schools shall establish and mark or cause to be marked these highway crossings.

"(b) Additional cross walks over highways not abutting on school grounds may be established as provided in paragraph (a) of this section upon application of school authorities and after adequate assurance has been given that guards will be maintained at such crossings by the school authorities to enforce their use by school children."

The sections of the law in question are contained within Article 10 of Chapter 139, Laws of 1953, which Article is a comprehensive grouping of regulations governing the rights and duties of pedestrians using streets and highways.

§ 89.1 provides special treatment for streets and highways adjacent to or near schools. This, for the apparent reason that school children as a class of pedestrians, require closer supervision.

Now, the question; Where does the responsibility lie for seeing that children cross only upon the cross walks provided? Does the phrase in § 89.1 (a) ". . . and all children crossing such highways shall be required to do so within the marked cross walk", or even the phrase contained in § 89.1 (b) ". . . and after adequate assurance has been given that guards will be maintained at such crossings by the school authorities to enforce their use by school children", fasten the responsibility exclusively on the school authorities or exclusively on the municipal authorities? The Legislature could so have determined, but it is believed that the intent rather was to create a common responsibility, the municipal and school authorities on streets within the jurisdiction of the municipalities, and the state and school authorities with respect to highways. Additional concern for the safety of school children plus the fact that the manner in which school children deport themselves as pedestrians directly affects the use by others on the streets and highways seems to warrant this conclusion. It is a responsibility the administration of which may be reasonably worked out by the authorities concerned.

However, there are specific things which the school authorities must do. By the express terms of the statute, guards must be maintained by the school authorities at crossings over highways or streets **not abutting** on school grounds, and § 89.1 (c) requires that certain signs shall be placed and then removed at certain times and places. There is no specific requirement that guards be maintained upon cross walks on streets or highway adjacent or bordering a school or school grounds.

The term "guard" is defined by Webster as "a man or body of men stationed to protect or control a person or position; a watch; a sentinel." The term, of course, could also mean some mechanical device installed to guard against danger or injury. However, the definition as quoted from Webster seems to be in harmony with the manner in which it is used in the statute.

However, taking into consideration the subject of regulation, it does not appear that an adult guard would be absolutely necessary, and thus patrol boys would fulfill the requirements of the statute where the statute calls for "guards". Moreover, if adult guards are hired, even though they may not be required by the statute, there seems to be no legal objection to their being paid out of school funds. This would seem to be a legal and proper expense in carrying out the duties of the schools.

Thus, the answers to the questions as enumerated are:

1. In schools within municipalities the responsibility for seeing that school children use cross walks, is common between the municipal and school authorities. In schools outside municipalities the responsibility is common between the state and school authorities.

2. The responsibility for maintaining guards on highways or streets not abutting school grounds rests upon the school authorities.

3. Mechanical devices may not be considered "guards" within the meaning of the statute.

4. Patrol boys fulfill the requirement of the statute where the term "guards" is used.

5. Adult guards if employed may legally be paid out of school funds.

Trusting that this is the information you desire, I am

By:

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