

Opinion No. 55-6231

July 11, 1955

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. Bertrand B. Prince, District Attorney, First Judicial District, Santa Fe, New Mexico

Letters addressed to you by the president and secretary of the New Mexico Small Business Men's Association, and your request for an opinion in connection with the matters therein have been received:

Your question: May the public schools engage in the retailing of candy, soda pop, potato chips and ice cream?

Although I find no express provision permitting the public schools to engage in such a practice, the public schools being quasi municipal corporations, are necessarily invested with those implied powers necessary to discharge their purposes and functions. Among the latter, it seems to me, are included the power to do those things reasonably connected with the comfort and safety of the pupils which attend them. This being so, I believe that the sale of the above items may properly be engaged to assure the comfort and safety of children attending the schools.

As an example may be cited the schools in rural areas where the above items, because of the great distance between the schools and stores, make it impossible, or at least very inconvenient, for the school children to secure them readily. In these situations it might be highly inconvenient for the children to secure the above items. Also the safety and health of these children, say, in inclement weather would be endangered.

It should be noted that I am not condoning the practice of the public schools engaging in any and all types of retailing activities. A clear illustration of what the schools may not do is, for example, engage in the sale of clothing to children, or to anyone else for that matter.

I trust this helps answer your inquiry.