

Opinion No. 55-6251

August 11, 1955

BY: RICHARD H. ROBINSON, Attorney General

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

We have your letter of August 8 requesting an opinion as to whether § 73-12-11, N.M.S.A., 1953, requires school teachers to submit an x-ray report on tuberculosis each year before the beginning of the school term.

Section 73-12-11, N.M.S.A., 1953 reads as follows:

"Employment of teachers with tuberculosis or syphilis prohibited -- Tests. -- No person shall be employed in the schools of the state, who is afflicted with communicable tuberculosis or syphilis. All teachers shall present to the governing authorities of the schools where employed a certificate from a licensed physician to the effect that they are free from any transmissible disease, which shall include tubercular Wasserman [Wassermann] tests, **together with the laboratory report thereof, which certificate shall not be dated more than twenty (20) days prior to date of the fall opening of the yearly school term.**" (Emphasis supplied)

This statute requires the following from each teacher: (a) A certificate from a licensed physician that the teacher is free from any transmissible disease, including tubercular and Wassermann tests; (b) A laboratory report covering the tuberculosis and Wassermann tests; (c) The certificate shall be dated within twenty days prior to the opening of the fall term of school; and (d) This certificate shall be submitted each year within the time specified.

It is the opinion of this office that if the x-ray is the accepted laboratory method for diagnosing tuberculosis, then an x-ray report would have to be submitted each year with the physician's certificate and the results of the Wassermann test.

It is to be noted that prior to 1943, when the present law was enacted, that the law provided that a teacher did not have to submit a new health certificate each year unless required by the governing authorities. Also, there was no requirement for a laboratory report. Since the Legislature, by the enactment of the 1943 law, saw fit to change these provisions, it seems clear that it was the intent of the Legislature that the certificates were to be submitted each year and had to include the laboratory reports showing the results of the tubercular and Wassermann tests.

Trusting we have answered your request, we remain

By Paul L. Billhymer

Assistant Attorney General