

Opinion No. 56-6395

February 17, 1956

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. J. C. Enloe, District Attorney, Seventh Judicial District, Socorro, New Mexico

You have presented for the opinion of this office two questions; the first of these is:

1. Is a County Treasurer's signature necessary for the validity of a warrant in payment of salaries of a County School Superintendent, a County School Superintendent's Clerk and County School Teachers?

Regarding this question, Section 73-7-27, N.M.S.A., 1953, provides:

"The district tax proceeds for direct charges shall be credited to each district from which collected, in a separate fund, and be disbursed upon the warrant or voucher of the governing authority of such district."

Section 73-7-28, N.M.S.A., 1953, provides, in part:

"All school funds to the credit of any district shall be kept by the county treasurer and withdrawn only by warrant or voucher of the proper board of education, as and when the expense matures. . . ."

Section 73-7-30, N.M.S.A., 1953, provides:

"Funds in the county treasury to the credit of the respective school districts shall be withdrawn only upon the warrants of the county, independent or municipal boards of education or union high school boards, as the case may be, and in no event shall any money credited to any district be expended or debts be incurred, except as herein authorized."

The above statutes are those which prescribe the substance and form of the warrants drawn on school funds. This office has on several prior occasions construed at least one of the above statutory provisions in connection with the question as to whose signatures are required on warrants drawn on school funds. Although the precise issue as to whether or not the County Treasurer's signature on such warrants is required has never been raised, nevertheless, the previous opinions of this office point to the conclusion that the County Treasurer's signature is not a requisite to the validity of such warrants. The general rule of warrants as it affects your question, being that "a warrant or order must be drawn in the form prescribed by statute, on or to the proper board or officer, and must be signed and countersigned as required; but it need not bear a seal unless the statute so requires . . ." 79 C.J.S., School and School Districts, Section 347 (d), page 52.

And so this office has held that since the above statutory provisions do not expressly provide for signing or countersigning by particular persons, such a warrant is sufficient if it bears the signature of one authorized by the Board to sign it, and further if it shows that such warrant is authorized by a majority of the Board. Attorney General's Opinion No. 4050, March 20, 1942. And, therefore, since the above statutory provisions do not require specifically that the County Treasurer's signature be on warrants authorizing the disbursement of school monies, it is the opinion of this office that his signature is not necessary. In addition to Opinion No. 4050 above, I am enclosing for your further information opinions Nos. 4773, August 22, 1945; No. 5799, August 20, 1953; and No. 6277, September 7, 1955. These are all related to the question answered above.

In connection with your first question, you further asked whether or not the County Treasurer had discretion in determining when she will pay the County School Superintendent, the County School Superintendent's Clerk and the County School Teachers. Section 73-9-7, N.M.S.A., 1953, provides that the County Boards of Education, ". . . shall have supervision and control of all rural schools and districts, and of sites, buildings, equipment, and funds of said districts, with the power to employ and discharge all teachers and all school employees of said schools, subject to the limitations herein otherwise provided; . . ."

The control of the funds of said districts and the power to employ and discharge teachers, implies the power to pay such teachers at such times as the Boards are required to do so by other statutory provisions. Now referring again to § 73-7-28, supra, we find that the school funds shall be withdrawn by a warrant "**as and when the expense matures.**" (Emphasis supplied) These provisions seem to us to indicate that the County Treasurer has no discretion in determining when the persons occupying the positions above will be paid.

The second question which you ask is the following:

2. Is the signature of the County Treasurer necessary on county orders (warrants)?

Employing the same reasoning above, that is, that warrants shall be drawn as prescribed by the statutes, we conclude that the County Treasurer's signature is not necessary on such warrants and orders. Section 15-44-4, N.M.S.A., 1953, provides:

"County orders shall be signed by the chairman and attested by the county clerk, and shall specify the nature of the claim of service for which they were issued, and the money shall be paid from the county treasury on such orders and not otherwise."

From the above, we conclude that a county order or warrant need only be signed by the chairman and attested by the County Clerk.

In connection with your second question you also ask whether or not the County Treasurer may, in his discretion, refuse to pay county warrants properly signed by the chairman of the Board of County Commissioners and attested by the County Clerk.

Except in instances where the Treasurer is specifically forbidden to honor a warrant in excess of a budget allowance, Section 11-1-11, N.M.S.A., 1953, and Section 15-51-5, N.M.S.A., 1953, or before the budget has been approved, Section 15-51-5, N.M.S.A., 1953, or when a warrant is presented to him and he may make deductions therefrom such as under Section 72-5-8, N.M.S.A., 1953, it is the opinion of this office that the County Treasurer has no discretion and may not refuse to honor warrants otherwise proper. Naturally the Treasurer must refuse to honor a warrant given for services which he knows have not been rendered. The honoring of such warrants would subject him to criminal liability under Section 40-8-12, N.M.S.A., 1953.

I trust the above answers your inquiries.

By: Santiago E. Campos

Assistant Attorney General