

Opinion No. 57-119

June 3, 1957

BY: OPINION OF FRED M. STANDLEY, Attorney General Robert F. Pyatt, Assistant Attorney General

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

QUESTIONS

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1. The authority of rural school directors?
2. How are rural school directors chosen in newly consolidated districts?

CONCLUSIONS

1. Rural school directors have no authority as a governing board, their function being advisory.
2. By the County School Superintendent.

OPINION

ANALYSIS

The request for an opinion calls for an examination of Sections 73-9-9 to 73-9-12, N.M.S.A., 1953 Compilation. Nowhere therein do we find that the legislature has vested any authority in boards of school directors of rural school districts. On the contrary, we find at § 73-9-7, N.M.S.A., 1953 Compilation, in the first paragraph thereof, that the legislature has provided as follows:

"Except with respect to independent and union high school districts, the county board 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; Provided, that the the county board of education may, in its discretion, delegate to the county school superintendent the power to employ and discharge all teachers and school employees."

And, furthermore, we find at § 73-9-8, N.M.S.A., 1953 Compilation, 1955 Supplement, the significant part of which reads as follows:

". . . The county board of education may constitute any board of school directors **its** agent to execute any ministerial duties, including repair to and maintenance of school buildings, grounds and equipment and the purchase of fuel and school supplies. Such county boards shall call upon the boards of school directors to nominate the teachers and school employees to be employed in their several districts, and to submit recommendations as to budget requirements." (Emphasis supplied.).

It is our opinion that the functions of boards of school directors of rural school districts are limited to advisory functions only, and, indeed such boards appear to be but mere agents of county boards of education. As an example see Opinion of the Attorney General No. 2010, dated July 17, 1931, in which it was held that the Board of Directors could advise the county board of education on teachers desired to be hired, but that said county board of education could entirely disregard such advice. We agree with such reasoning, the statutory language being clear, and hold that the authority of boards of school directors of rural school districts is advisory only.

Proceeding to the second question, as to the choosing of a board of rural school directors in a newly consolidated school district, § 73-20-3, N.M.S.A., 1953 Compilation, 1955 Supplement, provides as follows:

"Whenever any county board of education shall determine by resolution that substantial economies can be effected and standards of education improved by the consolidation of any two or more rural school districts within the county and shall furnish a copy of such resolution to the state board of education, the state board of education may order the consolidation of such districts; and pursuant to such resolution, when the state board of education shall determine and make definite findings at the conclusion of any survey made under the provisions of this act that substantial economies can be effected and the educational standards raised by the consolidation of any two or more school districts, said board may order the consolidation of such districts.

"The state board of education may order the consolidation of all classes of school districts pursuant to this act, including rural, rural independent, municipal, union high school, and prior consolidated districts, or any combination thereof upon the resolution of each of the governing boards, affected by such consolidation."

You have informed this office that the proposed consolidation of the two rural school districts in question is being done pursuant to this statute, i.e., to effect substantial economies. Furthermore, § 73-20-4, N.M.S.A., 1953 Comuilation, 1955 Supplement, in the last paragraph thereof, dealing with consolidation of rural school districts, provides that:

"Board members in such districts shall be elected at general school elections in the same manner and for the same length of terms as provided for election of municipal school boards."

This provision, however, deals with election of members of the board of directors of the consolidated rural district at the next general school election. It leaves unanswered the question of how the interim board is chosen for such consolidated rural district. Section 73-9-9, N.M.S.A., 1953 Compilation, dealing with rural district directors, provides among other things as follows:

"In newly created districts the county school superintendent shall appoint the three members of said board to hold office until the next succeeding election for school directors."

In our opinion such consolidated rural district is a "newly created district" within the meaning of this last provision. In short, the last cited and quoted provision provides for a new board. We do not believe that this is in conflict with § 73-9-12, N.M.S.A., 1953 Compilation, which reads as follows:

"The said board shall elect a chairman and clerk. Vacancies in said board shall be filled by appointment by the county board of education, the appointee to hold office until the next succeeding election of school directors."

The vacancy therein contemplated to be filled by appointment of the County Board of Education encompasses a situation of the existence of the old board as a body but with a vacancy in its membership; whereas the situation contemplated by the provisions above quoted from § 73-20-4, N.M.S.A., 1953 Compilation, 1955 Supplement, and § 73-9-9, N.M.S.A., 1953 Compilation, contemplate the existence and creation of a new board of school directors for the rural school district newly consolidated. In brief, rural school directors are chosen by the county school superintendent in newly consolidated districts.