

Opinion No. 57-144

June 20, 1957

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

TO: Hon. Norman Hodges, District Attorney, Sixth Judicial District, Silver City, New Mexico

QUESTIONS

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May the governing board of a consolidated school district, in its discretion, refuse to permit the use of its buildings or sites, either after school hours or during vacation, by all religious organizations, sects or denominations?

CONCLUSION

Yes.

OPINION

ANALYSIS

Section 73-20-6, N.M.S.A., 1953 Compilation, 1955 Supplement, provides that the governing boards of consolidated school districts have the same powers and duties as municipal boards of education, except boards of consolidated rural districts, which districts are located in counties where county boards of education are existing. We assume that the consolidated district in question is one which has its own governing board. This opinion is, accordingly, conditioned on this assumption.

Turning to § 73-10-2, N.M.S.A., 1953 Comp., we find that municipal boards of education have like powers over the schools and districts within their jurisdiction as those possessed by county boards of education. In § 73-9-7, N.M.S.A., 1953 Comp., it is provided that county boards of education

". . . shall have supervision and control of all rural schools and districts, and of cites, buildings, equipment and funds of said districts,"

In our opinion county boards of education, municipal boards of education, and boards of education of consolidated districts all have equal powers and supervision over the sites, buildings, equipment, etc., under their jurisdiction. See Opinion of the Attorney General No. 822, dated October 27, 1934, in which the Hon. E. K. Neumann held that since municipal school boards have those same powers as possessed by county boards, a

municipal board had the right to permit or deny the use of a school building for a public gathering of teachers.

Section 73-12-2, N.M.S.A., 1953 Comp., provides as follows:

"No teacher shall use any sectarian or denominational books in the schools or teach sectarian doctrine in the schools, and any teacher violating the provisions of this section shall be immediately discharged, his certificate to teach school revoked, and be forever barred from receiving any school moneys and employment in the public schools in the state. **Provided, that this section shall not be construed to interfere with the use of school buildings for other purposes authorized by the county board after school hours.**" (Emphasis added.)

You will observe that the proviso in this Section seemingly grants board discretionary powers to the board to permit use of school buildings for non-scholastic purposes. Of course, bearing in mind the primary purpose of any public school building, as well as the above cited Opinion of the Attorney General, it is our opinion that any non-scholastic use of the building would have to be after school hours or during vacation time so as not to interfere with the instruction of the pupils. We do not find in this or any other Statute a definition of the word "purposes" as used in the proviso to Section 73-12-2 supra. We prefer not to attempt to define this term in advance, but rather wish to construe it from time to time as particular occasion, as in this instance, arise. Bearing in mind the rather broad discretion placed in the governing board having jurisdiction over the particular school building involved, and the above Opinion of the Attorney General holding that a municipal board of education has the power to permit or deny the use of one of its school buildings for a public gathering of teachers, we conclude that the governing board of a consolidated school district, in its discretion, may refuse to permit the use of its buildings or sites either after school hours or during vacation by all religious organizations, sects or denominations.