

**Opinion No. 57-258**

October 10, 1957

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

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

**QUESTION**

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May students, of school age, be excluded from public schools by reason of being married?

CONCLUSION

No.

**OPINION**

ANALYSIS

This question was considered by the Honorable Frank H. Patton in Opinion of the Attorney General No. 1790, dated October 21, 1937, in which it was held that such could not be done under the provisions of Article XII, Section 1, Constitution of New Mexico, which reads:

"A uniform system of free public schools sufficient for the education of, and open to, all the children of school age in the state shall be established and maintained."

In said Opinion, it was reasoned that an exception excluding married students could not be read into the Constitutional provision. We readily agree.

In addition, your attention is invited to Article XII, Section 5, Constitution of New Mexico, and to Section 73-13-3, N.M.S.A., 1953 Comp., each dealing with compulsory school attendance. Neither provision contains language authorizing exclusion upon the above ground.

It is true that Section 73-16-1, N.M.S.A., 1953 Comp., provides for a school census in order to make proper disposition of the school fund, and limits the census to unmarried persons (in a certain age group). However, in the above cited Attorney General's Opinion, it was pointed out that such provision on excluding married people was because of little likelihood that many of them would seek admission to the public

schools. Be that as it may, we do not believe that Section 73-16-1, supra, controls your question.

The proposed exclusion would be clearly violative of the State Constitution.