

Opinion No. 58-146

July 9, 1958

BY: OPINION OF FRED M. STANDLEY, Attorney General Alfred P. Whittaker,
Assistant Attorney General

TO: Mr. Julius C. Sanchez, Assistant District Attorney, Seventh Judicial District,
Socorro, New Mexico

QUESTION

QUESTION

May the present consolidated schools of Socorro County, as now constituted, employ a Rural School Supervisor at the expense of the County?

CONCLUSION

No.

OPINION

ANALYSIS

Your letter requesting an opinion refers to Section 73-9-7, N.M.S.A., 1953, which provides, basically, that ". . . the county board of education shall have supervision and control of all rural schools and districts . . .", and further provides, in pertinent part:

"Said board may employ a rural school supervisor at the expense of the county, which supervisor shall be nominated by the county superintendent of schools and must be approved by the state board of education."

The same statute further provides at some length for the educational and other qualifications of the rural school supervisor. Clearly, the legislature here provided for the position of rural school supervisor to enable the county board of education more effectively to perform its statutory duty to supervise and control the rural schools of the county.

Your opinion request also refers to Section 73-10-2, N.M.S.A., 1953, relating to the powers of municipal boards of education, which provides in pertinent part:

"Except as otherwise provided by law, municipal school districts and the public elementary, and high schools therein shall be governed by a board of education in the name of the 'board of education of ____ (city, town or village) of ____ New Mexico' and as such except as otherwise provided have like powers **over the schools and districts**

within its jurisdiction as those possessed by county boards of education over their respective schools and districts (Emphasis added)."

The powers of a consolidated school district, like that which is the subject of your inquiry, are stated in Section 73-20-6, N.M.S.A., 1953, as follows:

"The governing boards of such consolidated school districts shall have the same powers and be charged with the same duties as municipal boards of education."

Your question then resolves itself to this: Did the Legislature, in providing generally for the powers of a consolidated school district, intend thereby to provide for some modified application of the power granted the old county board of education to employ a rural school supervisor? We think not. The statute cannot be so modified.

First, the statute contemplates employment of the supervisor "at the expense of the county." This provision is entirely proper as applied to the situation in which the rural school supervisor had duties relating to all rural schools. Information supplied us as to the present organization of school districts in Socorro County indicates that no one consolidated district supervises and controls all rural schools. Obviously, then, no one consolidated district can obligate other districts of the county for the compensation of a rural school supervisor as provided in Sec. 73-9-7. Application of the statute to the situation here considered would require modification of the language by construction to read, "at the expense of the consolidated school district." We do not think that the Legislature intended such a result.

Second, the statute contemplates nomination of the rural school supervisor by the county superintendent of schools. Clearly, such provision might be considered appropriate to the situation in which the county's rural public schools are still, in fact, supervised and controlled by a county board of education, having a duly elected and qualified county school superintendent with actual and substantial duties. There may be question as to the constitutionality of the provision in this respect, the source of which provision was Ch. 173, Laws of 1939. (See Opinion No. 3106, issued April 18, 1939; but compare Opinion No. 4475, issued March 9, 1944, holding the provision mandatory, without discussion of constitutionality.) Apart from such question, which we need not here decide, it seems clear to us that the provision cannot, in any event, find application in the circumstances now presented for opinion, since we are advised that no county school superintendent having actual and substantial duties now functions in Socorro County, in view of the various consolidations which have occurred.

Finally, the very nature of the position, in our view, precludes the statutory construction required to answer your question affirmatively. Clearly the Legislature, in providing for the power of municipal boards of education in Section 73-10-2 did not thereby authorize such boards to employ rural school supervisors in the sense of the statute, Section 73-9-7. Such boards were given powers over the schools within their jurisdiction similar to the powers of county boards over schools within their jurisdiction. Only by unlikely analogy could some application of Section 73-9-7 be made by a municipal board in this

respect. And the Legislature, in dealing with the powers of the consolidated school district, gave them the same powers as municipal boards of education. Thus, the unlikely analogy would have to be carried a step further, to permit application of Section 73-9-7 in this respect. In our opinion, such loose statutory construction is wholly unjustified.

We conclude that the employment of a rural school supervisor by the consolidated school district in question is not authorized by, and cannot be accomplished under, Section 73-9-7.