

**Opinion No. 59-159**

October 5, 1959

**BY:** HILTON A. DICKSON, JR., Attorney General

**TO:** Dr. Stanley J. Leland Director Department of Public Health Santa Fe, New Mexico

{\*248} In reply to your letter of recent date concerning the interpretation of what is known as the school immunization law, namely, Chapter 329, New Mexico Session Laws of 1959, you request an opinion on the following two questions:

1. Which department is responsible for enforcement of the punitive provisions for non-compliance of the requirements of Section 2 of Chapter 329, New Mexico Session Laws of 1959?

Specifically, your question related to the removal from school of any student who has not had the required immunizations.

2. What is the form of the affidavit referred to in Section 3 of Chapter 329, New Mexico Session Laws of 1959?

It is the opinion of this office that Sections 1 and 2 of Chapter 329, New Mexico Session Laws of 1959, are specifically controlling in answering your first question. The State Department of Public Health is charged and made responsible for the enforcement of the provisions of said section.

Section 1 of Chapter 329, reads as follows:

"Immunization Regulations. -- The **state board of public health shall**, after consultation with the state board of Education, promulgate rules and regulations governing the immunization against diseases deemed to be dangerous to the public health, to be required {\*249} of children attending public, private, or parochial schools in the state. The immunizations required, and the manner and frequency of their administration, shall conform to recognized standard medical practice in the state. The **state department of public health shall supervise and secure the enforcement of the required immunization program.**" (Emphasis supplied)

Pertinent part of Section 2 reads as follows:

"It is unlawful for any student to attend school for longer than one month unless he has been immunized, as required under the rules and regulations of the State Board of Public Health, and can provide satisfactory evidence of such immunization . . . ."

Section 4 of the same chapter in substance provides that it is the duty of the Superintendents of all schools to cause to be prepared a record sheet showing the

required immunization status of every child attending school under his jurisdiction. These records must be kept current and available to the public health authorities. The name of any parent or guardian who neglects or refuses to permit his child to be immunized against diseases required by the statute, shall be reported by said superintendent to the state department of public health within thirty-five days after the child is enrolled or begins attending school.

In arriving at our conclusion and opinion that the state department of public health is charged and made responsible for the enforcement of the provisions of said section of the statute, we have considered the direct and clear language of the statute neither adding or subtracting from same. Since any violation of this statute amounts to a misdemeanor the department of public health can undoubtedly obtain the help of the district attorneys and the justice of the peace in the state and precinct.

Your second question is in regard to the form of the affidavit to which said section refers.

The pertinent part of Section 3 of Chapter 329, reads as follows:

". . . or upon affidavits from an officer of a recognized religious denomination that such child's parents or guardians are bona fide members of a denomination whose religious training requires reliance upon prayer or spiritual means alone for healing."

The above language refers to those people who belong to some recognized religious denomination which believes that by prayer and faith they can be cured without the use of internal or external medicine or even the aid and advice of a physician.

One form of the affidavit might be as follows:

State of New Mexico)

County of \_\_\_\_ ) ss.

\_\_\_\_, the undersigned affiant, being first duly sworn under oath, states: That he is \_\_\_\_ (Title) of \_\_\_\_, (Denomination's name), a recognized religious denomination and that \_\_\_\_ parent or Guardian of \_\_\_\_, a student in \_\_\_\_ (name of school) is a member of this denomination in good standing; that this denomination does not believe in the use of internal or external medicine but believes that by prayer and faith a person can be healed of all illness; that all the allegations herein stated are true and correct of my own knowledge and belief.

\_\_\_\_ Title

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_, 1959 at \_\_\_\_, New {\*250} Mexico.

\_\_\_\_ Notary Public

My Commission expires:

\_\_\_\_\_

Hilario Rubio

Assistant Attorney General