

Opinion No. 60-112

June 17, 1960

BY: OPINION of HILTON A. DICKSON, JR., Attorney General

TO: Mr. Tom Wiley Superintendent of Public Instruction Department of Education Santa Fe, New Mexico

QUESTION

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On May 2, 1960, the Mora Independent School Board entered into contracts with non-teaching administrative personnel including janitors and a clerk for employment of such personnel for the 1960-61 school year. In view of the decision in **Trujillo v. Gandert**, is the Mora County School Board under an obligation to honor these employment contracts?

CONCLUSION

No, but see Analysis.

OPINION

{*486} ANALYSIS

The New Mexico Supreme Court, in the case of **Trujillo, et al., v. State ex rel. Gandert**, Sup. Ct. No. 6652, decided April 27, 1960, held that the Mora Independent Rural School District was invalidly created. Mr. Justice Carmody stated ". . . the purported creation of an independent rural school district was without legal force and effect." The decision of the Supreme Court affirmed in all respects the judgment entered by the District Court of Mora County on October 14, 1959, which judgment voided the existence of the Mora Independent Rural School District. The effect of the Supreme Court's decision is to re-establish the County Board of Education and the County School District. The motion for rehearing as to this decision has since been denied. Your question is whether employment contracts dated May 2, 1960 for non-teaching personnel entered into by the board of the now defunct Mora Independent Rural School District have legal effect so as to obligate the now valid County Board of Education.

In our opinion, the County Board is not under any legal obligation to honor these contracts. The Independent Board was a legal nullity at least since the date of District Court's Judgment. Since that date, being October 14, 1959, it was the official governing body of a school district void from its inception, being illegally created. Therefore contracts made after such date are of no force and effect and need not be honored by the now validly constituted Mora County School Board.

However, we see no reason why the County Board of Education, may not by its own action at a regularly called and held meeting, adopt such employment contracts as its contracts, or in lieu thereof, rehire the persons who have become parties to the non-teaching contracts with the defunct Independent Board. If such action is taken, the persons holding invalid contracts of employment with the defunct Independent Board will have valid contracts with the duly constituted County Board.

By: Philip R. Ashby

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