

Opinion No. 60-144

August 9, 1960

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

TO: Mrs. Joe E. Gandert County School Superintendent Mora, New Mexico

QUESTION

QUESTIONS

1. Can a county board of education legally employ a "Director of Instruction," without nomination by the county superintendent of schools or approval by the State Board of Education, if his duties are to be identical to those normally performed by a rural school supervisor?
2. If the answer to Question No. 1 is yes, can the county board of education vest in such Director of Instruction powers vested in the county school superintendent?
3. Is a rural school supervisor considered a "teacher"?

CONCLUSIONS

1. No.
2. No answer needed; however, no employee can be employed by the County Board of Education with powers and duties vested in the County School Superintendent by law.
3. Yes.

OPINION

{*524} ANALYSIS

We shall assume that the facts presented below are correct for the purposes of this opinion.

Section 73-9-7, N.M.S.A., 1953 Comp. (PS), relating to the powers of county boards of education reads as follows:

"A. Except with respect to independent and union high school districts, the county board of education shall have supervision and control of all rural schools and districts and of sites, buildings, equipment and funds of the districts **with the power to employ and discharge all teachers and all school employees of the schools, subject to the limitations herein otherwise provided;** Provided, that the county board of education

may in its discretion delegate to the county school superintendent the power to employ and discharge {*525} al teachers and school employees.

B. The board may employ a rural school supervisor at the expense of the county, who shall be nominated by the county superintendent of schools and must be approved by the state board of education. Supervisors must have a minimum of one (1) year actual teaching or supervisory experience in the elementary schools of New Mexico and must have high school graduation and at least a bachelor of arts degree or its equivalent from a full accredited college or university, and at least fifteen (15) hours training in classroom supervision. Supervisors shall not be members of the immediate family of the county school superintendent of the county for which such supervisor is appointed nor engage in any political activity and shall not be candidates for any elective office during their term of office as such supervisors." (Emphasis supplied).

It is clear that the above statute gives a county board of education the power generally to employ and discharge all teachers and other employees of the schools within its jurisdiction. However, the statute provides that such power is subject to limitations. In our opinion, one of these limitations is the limitation spelled out in Subsection B relating to the employment of a rural school supervisor. Under this subsection, the County Board, in its discretion, may employ a rural school supervisor. However, a fair reading of the statute shows that if such a person is to be employed, he must first be nominated by the county school superintendent and approved by the State Board of Education. Thus, the County Board of Education cannot employ a Rural School Supervisor who has not been nominated by the County Superintendent.

Apparently, the County Board wishes to circumvent this section and employ a "Director of Instruction" with duties normally performed by the Rural School Supervisor. In our opinion, this cannot be done. The reason seems clear. The statute says that a Rural School Supervisor, if he is to be employed by the County Board of Education, is to be nominated by the County School Superintendent. If the County Board of Education employs a person to do precisely the same job but merely designates him as a Director of Instruction, it has, in fact, violated that provision of the section which requires the County School Superintendent's nomination of such person. The above mentioned clear statutory provisions cannot be circumvented by the device of giving another title to one who in fact will perform the duties of a Rural School Supervisor.

The policy considerations behind our opinion make this clear. Under Section 73-5-3, the County School Superintendent, subject to the superior and supervisory powers of the State Board of Education and the Superintendent of Public Instruction, has the duty of exercising a careful supervision over all the rural schools of the county. It is obvious that in keeping with these supervisory powers, a Rural School Supervisor must be under the direction of the County School Superintendent. Thus, in order to have a satisfactory working relationship between the Superintendent and his Rural Supervisor, the Supervisor should be a person who is nominated by the County Superintendent. These considerations are made part of Section 73-9-7 (B), and in our opinion cannot be

circumvented by the subterfuge of calling a person who is, in fact, a Rural School Supervisor by any other title.

In view of our answer to your Question No. 1, we need not answer your second question. However, it is clear that the County Board of Education cannot vest in any other person powers and duties vested in the County Superintendent of Schools by Section 73-5-3. { *526 } To be sure, the County School Superintendent can delegate certain of these powers and duties to other employees of the school district. However, the responsibility of carrying out the provisions of Section 73-5-3 rests with the County School Superintendent and the County Board cannot take them away from him and vest them in another person.

In answer to your third question, it is our opinion that a Rural School Supervisor is a "teacher." This question was before the New Mexico Supreme Court in the case of **Ortega v. Otero**, 48 N.M. 588, 154 P. 2d 252 (1944). In this case, the court held that a Rural School Supervisor was a teacher for the purpose of the Teacher Tenure Act. Although the case is not squarely in point, we feel that the reasoning of the court was broad enough to define the position of Rural School Supervisor as being one of a teacher for all purposes.

By: Philip R. Ashby

Assistant Attorney General