

Opinion No. 63-169

December 20, 1963

BY: OPINION of EARL E. HARTLEY, Attorney General

TO: Leonard J. DeLayo State Superintendent of Public Instruction State Capitol Building
Santa Fe, New Mexico

QUESTION

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In view of the requirements of Section 73-7-81, N.M.S.A., 1953 (P.S.) Compilation which requires a school year of 180 days, does the Day of Mourning proclaimed in honor of the late President, John F. Kennedy, have to be made up?

CONCLUSION

Yes.

OPINION

{*392} ANALYSIS

A Day of Mourning on the day of the funeral of the late President, John F. Kennedy, was proclaimed on Monday, November 25, 1963. As a result, schools throughout the State were closed and no classes were conducted. The school year adopted had made no provision for such closing.

Our legislature in 1963 extensively amended existing statutes which affected schools. Among the statutes adopted was section 73-7-81, N.M.S.A., 1953 Compilation (P.S.) the pertinent part of which reads as follows:

"The legislature declares that a public school education should **provide a certain minimum opportunity for learning** in the areas of reading, writing, spelling, speaking, mathematical concepts and techniques, natural sciences economics, and state and national history. For the purpose of securing this **basic opportunity**, the legislature **finds** that the following **minimum school year** and staffing **are essential**, and **specifically directs that these requirements shall be equaled or exceeded in public schools** in the state:

A. A school year **shall consist** of at **least** one hundred-eighty (180) teaching days; and" (Emphasis added).

Initially the question concerns the meaning of the words "teaching days." The words are not specifically defined in our school law so the intent of the legislature must be determined. No similar statute has been found that has been construed.

The word "teach" has been construed in numerous cases, including New Mexico as "one whose occupation is to instruct." **Ortega v. Otero**, 48 N.M. 588. The word "teach" has been defined as "to impart knowledge by means of lessons." **Black's Law Dictionary Fourth Edition**.

General rules of construction must necessarily be resorted to interpreting the act and particular language. Generally, the intention of the legislature is controlling and no formalistic rule of grammar or word form should stand in the way of carrying out the legislative intent in determining whether particular legislation is mandatory or directive. **Southerland, Statutory Construction 3rd Ed. Section 2802**. Generally, unless the context indicates otherwise the word "shall" {*393} indicates a mandatory intent. **Southerland**, supra, **Section 2803**. It is stated in **Southerland, supra, Section 5808** as follows:

"One of the places where rules for the construction of statutes as mandatory or directory have been most clearly defined is with respect to provisions directing action or conduct on the part of public officers. Where statutes provide for the doing of acts or the exercise of power or authority by Public officers, and private rights or the public interest require the doing of such acts or the exercise of such power or authority, they are mandatory, regardless of whether they are phrased in imperative or permissive terms."

Applying these rules the language of the statute is mandatory. Similarly the words "teaching days" will be given their natural meaning and not a strained construction. Under the definitions above set forth for "teach" and "teacher" it would appear the natural construction would be to define the words as day on which instruction in the schools is actually offered and not just a day of the week when except for some untoward incident, such or here occurred, instruction would normally have been offered. This construction is strengthened by the other language of the provision declaring that the public interest requires the **instruction** and that the 180 day school year was **minimum** requirement to secure this amount of instruction. The legislative intent fairly clearly appears to be concerned with the amount of instruction offered, not with the number of days available within which instructions could, if desired, be offered.

The provisions of the section in question, therefore require that the day lost to the observance of the Mourning of the Death of President Kennedy must be made up.

By: James V. Noble

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