

Opinion No. 64-21

March 5, 1964

BY: OPINION OF EARL E. HARTLEY, Attorney General Thomas A Donnelly, Assistant Attorney General

TO: Mr. Leonard J. De Layo, Superintendent of Public Instruction, Capitol Building Santa Fe, New Mexico

QUESTION

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Does the State Board of Education have authority to meet and to take official action at locations other than the office of the State Board in Santa Fe, New Mexico?

CONCLUSION

See analysis.

OPINION

ANALYSIS

Two state constitutional provisions bear in part upon the problem presented for consideration. Article V, Section 1, of the New Mexico constitution provides in applicable part:

". . .

The officers of the executive department except the lieutenant governor, shall during their terms of office, reside and keep the public records, books, papers and seals of office at the seat of government."

Article XXI, Section 6, of the New Mexico constitution sets out that "the capital of this state shall until changed by the electors voting at an election provided for by the legislature of this state for that purpose, be at the city of Santa Fe. . ."

In addition to the above cited constitutional provisions, several legislative acts specifically relate to your inquiry. Section 73-1-7, N.M.S.A., 1953 Compilation, paragraph J., specifies that the state board of education is invested with the power to make and require the performance of all needful rules and regulations respecting the general powers of supervision of schools by the board. Section 73-1-7, paragraph K, empowers the board to institute or cause to be instituted, prosecutions against all persons for violations of the school laws.

Section 73-1-1, N.M.S.A., 1953 Compilation, contemplates that the State Board of Education actively supervise and "be a governing authority of all public elementary and high schools of the State." Such section specifically sets out in part:

". . . For the purpose of enforcing the provisions of this act the state board of education shall, if necessary, institute legal proceedings. The secretary of the state board of education shall have authority to administer oaths in **any part of the state, to witnesses in any matter pending before said board.. .**" (Emphasis supplied).

Article XII, Section 6, of the state constitution, also sets out that "the state board of education shall determine public school policy and vocational educational policy and shall have control, management and direction of all public schools, pursuant to authority and powers provided by law."

Construing all applicable constitutional and statutory provisions together, it is our opinion that the state constitution necessitates that the State Board of Education maintain its permanent office, books, records and files in Santa Fe, at the state capital, and the board must hold in most instances its regular meetings at the state capital. However, the board pursuant to its constitutional and statutory authority to supervise the public schools of this state, may from time to time hold meetings in various parts of the state to study, consider and decide matters pertinent to the schools in the area where the meeting is held. Specifically, Section 73-1-1, supra, contemplates that the board may investigate matters in "any part of the state."

Section 5-6-17, N.M.S.A., 1953 Compilation, requires all governmental boards to make all final decisions at meetings open to the public, but does not limit the situs of the meeting. In all cases where the purpose of the meeting does not intimately affect a local school system and necessitate the holding of the board meeting at a site other than the state capital it is our opinion that such meetings should be held in Santa Fe at the seat of government for the state of New Mexico.