

Opinion No. 70-77

September 23, 1970

BY: OPINION OF JAMES A. MALONEY, Attorney General

TO: Mr. E.P. Ripley General Counsel New Mexico Department of Education Santa Fe, New Mexico 87501

QUESTIONS

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May the State Board of Education, acting under the provisions of Section 77-6-10, N.M.S.A., 1953 Compilation, 1969 Supplement, suspend a school board after April 1st of each year?

CONCLUSION

No.

OPINION

{*132} **ANALYSIS**

The laws of the State of New Mexico provide that, in certain circumstances, the State Board of Education may act to suspend a local school board from authority and responsibility. Section 77-6-10, N.M.S.A., 1953 Compilation, 1969 Supplement provides:

"A. Money budgeted by a school district shall be spent first to attain and maintain the requirements for a school district as prescribed by the state board. The state board, prior to April 1 of each year, shall give written notification to a local school board of any failure to meet requirements by any part of the school district under control of the local school board. The notice shall specify the deficiency. A copy of the notice shall be sent to the chief.

B. Within sixty (60) days after receipt of the notice of failure to meet requirements, the local school board shall:

(1) meet the specific and attendant requirements and thereby remove the cause for disapproval; or

(2) develop plans satisfactory to the state board to meet requirements and remove the cause for disapproval prior to the beginning of the ensuing school year.

C. The chief shall not give final approval to the budget of a school district notified of disapproval until the state board informs the chief in writing that:

(1) cause for disapproval of the school district has been removed or satisfactory plans exist for doing so and the school district is eligible for final budget considerations; or

(2) the state board has suspended the local board and will act in lieu of the local school board in budgetary matters of that school district.

D. The state board shall suspend from authority and responsibility any local school board which has had notice of disapproval and fails to comply with procedures of subsection B of this section. The state board shall act in lieu of the suspended local school board until the state board removes the suspension.

E. To suspend a local school board, the state board shall deliver to the local school board or one of its members an alternative order of suspension, stating the cause for the suspension and effective date and time the suspension will begin. The alternative order shall also contain notice of a time, date and place for a public hearing, prior to beginning of suspension, to be held by the state board, at which the local school board may show cause why it should not be suspended. After the hearing, the state board shall make permanent, modify or withdraw the alternative order within five (5) days.

F. The state board, while acting in lieu of a suspended local school board, shall:

(1) provide management or other necessary personnel;

(2) correct the deficiency specified in the notice to the local school board;

(3) charge to the budget of the school district all costs and expenses of the suspension and necessary remedial actions; and

(4) have at least one (1) member of representative reside in the district.

G. The provisions of this section shall be invoked at any time the state board finds the school district has failed to attain and maintain the requirements of law or state board standards and regulations."

It will be observed that the initial step in the removal proceeding, subsequent to a determination by the State Board that its requirements are not being met, is formal notice to the local board of that fact. The notice is required by Paragraph (A) of the Section to be made prior to April 1st. Compare Attorney General Opinion No. 69-126, issued October 30, 1969.

When statutory language is clear and {^{*133}} unambiguous on its face, there is no need or justification for seeking a construction of the language which would alter that meaning. **Schoonover v. Caudill**, 65 N.M. 335, 337 P. 2d 402 (1959); **Weiser v.**

Albuquerque Oil and Gasoline Company, 64 N.M. 137, 325 P.2d 720 (1958); **Tafoya v. Garcia**, 1 N.M. 480 (1871). Moreover, when statutory authority is granted an agency or officer to do a particular thing, and the method and procedure of doing it is set forth in detail, it is limited to being done in that manner and in no other. **Fancher v. Board of Commissioners of Grant County**, 28 N.M. 179, 210 Pac. 2d 237 (1922).

It would appear that the requirement of timely institution of removal proceedings is an explicit, essential part of the removal procedure, and that it constitutes the sole manner in which removal proceedings under Section 77-6-10, *supra*, may be begun. When such fundamental requirements are not observed, any removal action subsequently carried out is void. **Shepherd v. State Personnel Board**, 48 Cal. 2d 41, 307 P.2d 4 (1957); **North Bergen Township v. Department of Civil Service**, 42 N.J.S. 67, 126 A.2d 69 (1956).

Thus, unless the State Board of Education gives timely notice of its intention to begin removal proceedings to the local board in question, it may not proceed further in the matter.

By: Richard J. Smith

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