

## **Opinion No. 71-102**

August 26, 1971

**BY:** OPINION OF DAVID L. NORVELL, Attorney General

**TO:** The Honorable Robert A. Mondragon Lieutenant Governor Executive-Legislative Building Santa Fe, New Mexico 87501

### **QUESTIONS**

#### QUESTIONS

1. Does Article XII, Section 8, New Mexico Constitution require that the Legislature provide for the training of New Mexico teachers so that they may become proficient in both the English and Spanish languages?
2. If the answer to question No. 1 is in the affirmative, what has been done, should be done or could be done by the New Mexico Legislature to comply with the constitutional mandate?
3. What was the intent of the founding fathers of our State in enacting Article XII, Section 8?

#### CONCLUSIONS

1. Yes.
2. See analysis.
3. See analysis.

### **OPINION**

#### **{\*153} ANALYSIS**

Article XII, Section 8, New Mexico Constitution reads as follows:

"The legislature shall provide for the training of teachers in the normal schools or otherwise so that they may become proficient in both the English and Spanish languages, to qualify them to teach Spanish-speaking pupils and students in the public schools and educational institutions of the state, and shall provide proper means and methods to facilitate the teaching of the English language and other branches of learning to such pupils and students."

The wording of Article XII, Section 8 clearly indicates that the Legislature is to provide for the training of New Mexico teachers so that they may become proficient in both the English and Spanish languages. Thus the answer to the first question is in the affirmative.

Turning next to your third question, the exact intent of the founding fathers in enacting this Article is impossible to ascertain. Only the briefest outlines remain of what transpired during the drafting of the state Constitution. We must therefore determine the intent from the words themselves in this and related articles of the Constitution.

In Article XII, Section 8 the language used is imperative: "shall provide." However, the imperativeness of the first clause is somewhat obscure by the use of the word "may" in the second line. We feel that the phrase "so that they may become proficient" can be read as "in order that they become proficient," thus eliminating the confusion of the word "may." Thus the clause is imperative: the Legislature is **required** to provide for training of teachers in order that they become proficient in both languages.

The wording of the next phrase, "to qualify them to teach Spanish-speaking students," indicates that the framers felt that proficiency in both languages was essential for someone to be qualified to teach Spanish-speaking pupils. This leads us to the conclusion that the intent of the framers was that the Legislature provide trained teachers proficient in both English and Spanish. Thus, to comply with this provision, the Legislature would have to do more than establish training programs; it would have to ensure that a sufficient number of teachers are trained in those programs "to teach Spanish-speaking pupils and students in the public schools and educational institutions of the state." (Art. XII, § 8)

This conclusion is not consistent with that portion of Attorney General Opinion No. 68-15, dated February 1, 1968 which interprets Article XII, Section 8 to be a "directive to the legislature to provide training . . . to enable those **who so desire** to become proficient in both the English and Spanish languages." (Emphasis added.) We interpret the directive more affirmatively: that the Legislature must in fact provide **teachers**, not just training programs. To the limited extent that this conflicts with Attorney General Opinion No. 68-15, the latter is overruled.

Article XXI, Section 4 of the New Mexico Constitution states:

"Provision shall be made for the establishment and maintenance of a system of public schools which shall be open to all the children of the state and free from sectarian control, and said schools shall always be conducted in English."

The phrase "said schools shall always be conducted in English" is mandatory but must be read in light of Article XII, Section 8, **supra**. In the latter the framers specifically mandated the Legislature to provide for the training of teachers in both languages, "so as to **qualify** them to teach Spanish-speaking pupils" (Emphasis added.) Given this expressed concern, we must conclude that the framers contemplated Spanish being

used in the classroom. Correspondingly, we interpret the phrase "said schools shall always be conducted in English," to mean that English shall always be used, but not to the exclusion of every other language.

We thus conclude in answer to your third question that the intent of the founding fathers was to **require** the {\*154} Legislature to provide trained teachers proficient in both English and Spanish so that they can "teach Spanish-speaking pupils and students in the public schools and educational institutions of the state." (Art. XII, § 8).

The answer to your second question requires an analysis of the various actions of the Legislature which relate to Article XII, Section 8. There is no doubt that significant efforts have been made to provide training for New Mexico teachers in the area of bilingual education. As a part of the 1971 General Appropriations Act (ch. 327, Laws of 1971) the Legislature appropriated \$ 109,000 to New Mexico Highlands University for a "bilingual language program" for the coming fiscal year. This was set at \$ 112,500 for the following fiscal year. Also we note that a portion of the funds appropriated in the past to Eastern New Mexico University and the University of New Mexico have been used to train teachers for areas with large non-English-speaking populations. Unfortunately, these programs do not include the requirement that the trainees be **proficient** in Spanish, although the "Composite Minor in Bilingual Education" at the University of New Mexico does require twelve hours of foreign languages unless the student can demonstrate acceptable language proficiency.

In addition, two significant laws have been enacted within the past three years providing for the **utilization** of teachers trained in bilingual education:

1. Chapter 309, Laws 1971, which allocates \$ 100,000 for bilingual education programs; and
2. Chapter 161, Laws 1969 (§ 77-11-12, N.M.S.A., 1953 Comp.) which permits school districts to establish "bilingual - bi-cultural programs."

Not all the actions of the Legislature over the years have been beneficial to the concept of providing teachers proficient in both English and Spanish. The transition through which the Northern New Mexico State School (formerly known as the Spanish-American School at El Rito) has passed is an example of this. Laws 1909, Chapter 97, Section 1 provided that:

"The object of the Spanish-American School at El Rito shall be to educate Spanish-speaking natives of New Mexico for the vocation of teachers in the public schools of the counties and districts where the Spanish language is prevalent."

In 1955 this objective was changed and broadened as currently reflected in Section 73-22-34A., N.M.S.A., 1953 Comp. The objectives of the school no longer relate to training teachers, nor to the needs of Spanish-speaking pupils in Spanish-speaking communities.

Your second question also asks what should or could be done by the Legislature to comply with the constitutional mandate of Article XII, Section 8. As mentioned above, we read Article XII, Section 8 to include a mandate to the Legislature to provide teachers proficient in both English and Spanish, to teach Spanish-speaking pupils; we do not feel that this requires **all** teachers to have this proficiency. Obviously, the Legislature should comply with this mandate. It is not within the province of this office to state how this should be done. However, as a starting point, it would seem that a determination should be made of the number and areas of concentration of Spanish-speaking pupils and students in the state. From this it should be ascertained in how many classrooms of the state bilingual teachers are necessary. The various colleges and universities in the state which train teachers should then be required by the Legislature to provide training so that a **sufficient number** of teachers can "become proficient in both the English and Spanish languages, to qualify them to teach [these] Spanish-speaking pupils and students" in these areas of concentration. (Article XII, § 8).