

Opinion No. 77-06

February 7, 1977

OPINION OF: Toney Anaya, Attorney General

BY: Jill Z. Cooper, Assistant Attorney General

TO: Representative William E. Warren, Chairman, Legislative School Study Committee, Room 310-A, State Capitol, Santa Fe, New Mexico 87503

STATE BOARD OF EDUCATION-CERTIFICATION-ARTICLE XII, SECTION 6.-The legislature may provide that a separate commission, other than the state board of education, shall govern the certification of teachers.

QUESTIONS

Is it constitutional for the legislature to establish a separate commission to govern the certification of school personnel in New Mexico?

CONCLUSIONS

Yes.

ANALYSIS

Article XII, Section 6 of the New Mexico Constitution creates a State Board of Education and provides that such board

. . . 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.

OPINION

It is against this provision that the constitutionality of proposed legislation establishing a separate commission to govern certification of school personnel must be judged.

Although Section 77-2-1, NMSA, 1953 Comp. provides that

[t]he state board is the governing authority and shall have control, management and direction of all public schools, except as otherwise provided by law. {*87} the state board's control over public schools has been construed by New Mexico courts as being dependent on legislative enactment. In *Amador v. New Mexico State Board of Education*, 80 N.M. 336, 337, 455 P.2d 840 (1969), the court held that Article XII, Section 6 is not self-executing and the regulatory power of the state board "must be

found in and is limited by statute." The court in *Amador* found that the board's statutory authority to revoke a teaching certificate for good and just cause did not confer the authority to suspend a certificate for incompatibility of office.

In *Santa Fe Community School v. New Mexico State Board of Education*, 85 N.M. 783, 784, 518 P.2d 272 (1974), the court held that while the constitutional authority of the state board only refers to public schools, "the Board may exert such authority in the supervision and control of private schools as is conferred by the legislature in the proper exercise of state police power." In *Fort Sumner Municipal School Board v. Parsons*, 82 N.M. 610, 485 P.2d 366 (Ct. App. 1971) the court held that the state board has control, management and direction of public schools but only as provided by law and, as the statute did not authorize the state board to reach an independent result in reviewing a local board decision, it could not do so. In *State v. Montoya*, 73 N.M. 162, 386 P.2d 252 (1963), the court held that as the statutes did not give the state board the right to hear appeals in cases involving teacher transfer, the state board was without power to do so. Compare *Wickershaw v. New Mexico State Board of Education*, 81 N.M. 188, 464 P.2d 918 (1970). And, in *State ex rel. Hannah v. Armijo*, 37 N.M. 423, 24 P.2d 274 (1933) the court held that although the legislature may not enact measures which are destructive of the "primary powers" of the board, the control given the state board may be exercised only as provided by law. See also *Bourne v. Board of Education of City of Roswell*, 46 N.M. 310, 128 P.2d 733 (1942).

Similarly, the Nebraska Supreme Court in construing constitutional provisions not unlike Article XII, Section 6 found that the general supervision and administration of the public schools, although constitutionally granted to the state board, is dependent upon implementing legislative action. *School District of Seward Education Association v. School District of Seward, etc.*, 188 Neb. 722, 199 N.W.2d 752 (1972).

Finally, in 1959, when Article XII, Section 6 was amended to provide for an elective state board, this office concluded that although the courts may construe powers previously granted the former board as being vested in the new board, statutes transferring and vesting such powers in the new board would be advisable. Opinion of the Attorney General No. 59-1, dated January 2, 1959.

Thus, it is well-established that the authority granted the state board for the "control, management and direction of all public schools" under Article XII, Section 6 must be specifically defined by the legislature. And, if the state board's constitutional authority is so limited, then it would necessarily follow that the legislature may also divest the state board of duties previously defined. The power and authority of the state board may be exercised only "as provided by law" and the legislature may, as implied by your question, {*88} provide for the repeal of Subsections 72-2-2(G) and (H), NMSA, 1953 Comp. delegating the duties of certification to the board. As the courts have construed it, Article XII, Section 6 does not, in itself, vest the state board with any particular duties and the legislature is empowered to determine the scope of the board's authority.

Therefore, in response to your question, whatever the merits of the proposed legislation, there is no constitutional barrier to establishing a separate commission to govern the certification of school personnel.

ATTORNEY GENERAL

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