

Opinion No. 12-956

November 7, 1912

BY: FRANK W. CLANCY, Attorney General

TO: Hon. Alvan N. White, State Superintendent of Public Instruction, Care The Commercial Club, Albuquerque, N. M.

DISPOSITION OF FINES AND ELECTION OF COUNTY SUPT. OF SCHOOLS.

All fines must go into state treasury to credit of current school fund.

OPINION

{*112} I have had no earlier opportunity to answer your letter of the 2nd instant, and trust it is not now too late to be of assistance to you.

You say that there are two questions as to which you desire an opinion from me, the first of which is as to the interpretation to be placed upon the language in Section 4 of Article XII of the Constitution, which provides that "all fines and forfeitures collected under general laws," together with other moneys, shall constitute the current school fund of the state. I agree with you that all such fines and forfeitures must through the proper channels of collection come to the state treasury to be placed to the credit of the current school fund of the state, and that this must do away with all previous statutory provisions as to what should be done with such fines and forfeitures.

Your second question is in substance as to whether or not the election of the county superintendent of schools may be considered as school elections within the meaning of Section 1 of Article VII of the Constitution, where it is provided that "all school elections shall be held at different times from other elections." Whether this be so or not, I am quite clear that this provision cannot be self-executing and requires legislative action to put it in force. At the present time the election of all county officers, including the school superintendent, is to be held at the same time, and the only provision in the constitution on the subject is that to be found in Section 2 of Article X, where it is declared that all county officers shall be elected for a term of four years. There is no restriction, however, upon the power of the legislature to fix the times of elections of county officers, and I believe it is quite within the power of the legislature to provide for the election of school superintendents at a time different from the election of other county officers, whether their election is to be considered as a school election or not within the meaning of the constitution. In other words, there is no constitutional obstacle to separate that election from the others.

My own opinion is that the election of a county school superintendent can properly be considered as a school election, the same as the election of school directors, and I agree with you as to the reasons for this. The election of the county school

superintendent is of even more importance to the interest of the schools than the election of local school directors. If the legislature can be persuaded to place this construction upon the constitution, that would be conclusive.