

Opinion No. 12-958

November 18, 1912

BY: FRANK W. CLANCY, Attorney General

TO: Hon. Alvan N. White, State Superintendent of Public Instruction, Santa Fe, N. M.

SCHOOLS.

Method to be pursued in drawing money from state reserve fund.

OPINION

{*114} I have today received your letter of the 16th instant in which you ask my opinion as to the method to be followed in drawing money from the state reserve fund for the benefit of weak school districts otherwise unable to maintain school for the full terms of five months. You call attention to the fact that by Section 5 of Chapter 51 of the Laws of 1912 this relief to school districts is subject to the limitation that no school district shall expend for maintaining a school for the full term of five months anything in excess of the sum of three hundred dollars for each school room.

In a general way I think the statute quite clearly points out the method ordinarily to be pursued and presents no serious difficulties, but the particular case to which you refer does seem to make the general method a little difficult of application. You say that "district No. 25 in Santa Fe County has no funds, though it appears from an estimate made by the county superintendent that during the year this district will have from the ordinary sources about \$ 260, and will need only \$ 40 from the state reserve fund." You further say that there will be no funds available for this district for some months.

If it is true that this district will have no funds for some months, it must be that the only funds it can expect will be from the taxes levied last summer. A large part of those taxes will not be collected until next June or July, after the school will undoubtedly be closed. I am not at all clear that money collected at that time should be considered as necessarily collected for the expenses of the school year, which would then be near its close, as under the statute the school year ends the last day of August. It is quite certain that moneys collected for county purposes generally from the tax rolls now in the hands of the collectors, must constitute the fund for the current year, as appears from Section 305 of the Compiled Laws. Now, whether the money collected for school purposes, which may perhaps be considered as part of the county purposes, is to constitute the fund for the next current year beginning next September, or is to constitute the fund for the current school year which began on the first of last September, may be open to some doubt. Practically, as the schools are usually closed by the time the June collections are made, it would not seem reasonable to hold that the proceeds of taxes on the present tax rolls are to constitute the fund for the school year which would finish not long after the June collections are made. I suggest this matter for some further

investigation on your part so as to ascertain just what are the sources of income from which the county superintendent expects to realize his \$ 260 for the present school year, and when you have ascertained that exactly {*115} I would like to discuss this part of the question further with you.

I cannot believe that it will be proper at the present time to act in the manner permitted by Section 1535 of the Compiled Laws of 1897, which in effect authorizes the drawing of school warrants to be approved by the county superintendent, even when there are no funds to the credit of the district, so that upon an endorsement by the county treasurer the warrant may draw interest, and the holder of it can then go out and peddle it around for the best price he can get. The said Section 1535 was a part of the act of February 12, 1891, being Section 22 of Chapter 25 of the Laws of that year. Its provisions are so inconsistent with Section 299 of the Compiled Laws, which was Section 15 of Chapter 42 of the Laws of 1897, that I believe in great part it is repealed by the latter section. You will see that Section 299 makes it unlawful for any board of school directors to contract any debts during any current year which at the end of such current year cannot then be paid out of money collected and belonging to that current year, and makes any such officer who shall issue any certificates or other form of approval of indebtedness separate from the account filed in the first place, guilty of a misdemeanor. This was intended to put an end to the practice which had existed of issuing warrants upon approved accounts when there was not money in the treasury to pay the warrants. A scandalous condition arose under which county warrants were hawked about and sold at a discount, the credit of the counties became impaired, and as a result people who sold anything to the county charged a higher price than to any other customer. It was clearly intended that these new provisions should apply to school districts, as well as to counties, and I cannot believe that it would be now proper to issue warrants under Section 1535, to become interest-bearing negotiable warrants, in the face of the provisions of Section 299 of the Compiled Laws.