

Opinion No. 14-1254

June 23, 1914

BY: FRANK W. CLANCY, Attorney General

TO: Mr. A. W. Hockenull, Clovis, New Mexico.

SCHOOLS.

Definition of a school district.

OPINION

{*114} Your letter of the 18th inst. was received on Sunday afternoon and after some conference with Mr. Asplund, of the Department of Education, I have come to the conclusion that the opinion which you indicate, without positively stating it in your letter, is the correct one and I learn also that it is substantially the same as expressed in a letter of Superintendent Clark to Mr. Mersfelder in 1909, although I think that that was with reference to the division of a school district which was not complicated with such a division as to put a part in another county, as in the case of which you write.

By Section 22 of Chapter 97 of the Laws of 1907, it is provided that in the adjustment of property, money and indebtedness upon the creation of a new school district, "the superintendent, in co-operation with the board of county commissioners, of the county in which such districts are situated," is authorized to use such means as will best serve the mutual interest of the two districts and his decision shall be final, subject to appeal to the courts. That statute did not contemplate any such condition as one arising from a division of a district by the creation of a new county, but it would seem to furnish a guide to the best method of procedure and this would seem to require the united action of the superintendents and boards of county commissioners of both counties. If a harmonious and amicable adjustment can thus be made, there probably would never be {*115} any question raised by anyone, although there may be a doubt as to the strict legality of such an arrangement in the absence of any statute authorizing it. Either district could certainly appeal to the courts and possibly the most satisfactory and definite way of settling the matter would be to bring the question before the District Court by way of a friendly suit in equity in which the several districts should be made parties and get a decree settling all possible questions upon equitable principles. This need not be a matter of any considerable expense as you could, for one of the districts, prepare a complaint making the others defendants and setting up all the facts and could prepare an answer admitting the correctness of the allegations of the complaint and have that answer signed by the directors of the other district and upon the facts so stated the court could make its decree.