

Opinion No. 14-1327

September 17, 1914

BY: FRANK W. CLANCY, Attorney General

TO: Mr. T. Illegible Word_ Teel, Elk, New Mexico.

SCHOOLS.

As to power of school directors to furnish clothes and shoes to pupils, and failure to hold school election.

OPINION

{*187} I have received your letter of the 14th instant in which you ask what should parents do when they have children living within three miles of a public school and are not able financially to get clothes and shoes to send the children to school, and what would be the duty of a trustee in a case of that kind.

There is no provision of law in New Mexico, so far as I am aware, directly applicable to any such condition. By Section 25 of Chapter 97 of the Laws of 1907 it appears that the school directors of every school district are required to provide suitable school houses; to keep them in repair; to provide necessary furniture and fuel; to pay teachers' wages and interest on school bonds "and to defray all other contingent expenses connected with the proper conduct of the schools of the district." Then follows a further provision as to how the necessary funds for such purposes shall be obtained. I am not at all clear how far the general provision in the language above quoted would extend, but it would see to leave considerable discretion to the school directors. My impression is that in some cases school directors have provided from the school funds transportation for children who lived at such great distances from the school house that they could not come and go without such assistance, but it does not seem at all clear that they would be authorized to provide clothes and shoes for children to enable them to attend school, although if I were a school director myself I would be much inclined to make such use of the school money if it could be so used without interfering with the proper maintenance and conduct of the schools. I will submit this, however, to the State Superintendent of Public Instruction, who is, by law, the adviser of all school officers.

You further ask what would be the penalty if a director should tack up notices to hold an election and then would not come to hold {*188} the election and had no reason for not coming, and in case of such failure whether the county superintendent has the power to appoint trustees to fill the vacancies. In case of failure to hold elections it has been decided, by one district court in New Mexico, that vacancies would thereby exist which must be filled by appointments to be made by the county school superintendent.

As to the penalty which might be imposed for failure to hold the election in accordance with the notices given, the law is not plain. The statute provides as follows:

"Any school director who shall fail to call the election and post the notices therefor, or to correctly certify the result of such election as required in this section, shall be deemed guilty of malfeasance in office, and shall be disqualified from again holding said office by appointment or otherwise for a period of one year thereafter, and shall be summarily removed by the superintendent of schools, and shall be fined not less than twenty-five dollars nor more than one hundred dollars, or imprisoned in the county jail not less than twenty-five nor more than one hundred days, the said fines to go to [Illegible Word] become a part of the school fund of the district in which such person was a director. And it is hereby made the duty of the county school superintendent so removing a director to make affidavit of the facts to the district judge, or before any justice of the peace, and to act as prosecuting witness against said director."

You will notice that a school director may be punished for failure to correctly certify the result of the election. As no election is held he could not certify the result of it, and a court might hold that the offense of failure to hold the election was not within the letter of this statute so that he could be punished for that. You might, however, make complaint to your county school superintendent and ask him to take action against the defaulting officer. There is another statute, published as Chapter 121 of the Laws of 1909, which might be held applicable. Section 12 of that act provides generally for the punishment by fine of any school officer who may violate provisions of any act as to his duties, or who shall not faithfully perform all such duties.