

Opinion No. 14-1359

October 8, 1914

BY: FRANK W. CLANCY, Attorney General

TO: Mr. T. F. Teele, Elk, New Mexico.

SCHOOLS.

Failure of county superintendent of schools to take action against directors who fail to hold election.

OPINION

{*220} I have just received your letter of the 2nd inst., in which you ask what would be the penalty upon a county superintendent who failed to take any action against school directors after being notified that the directors had failed, properly, to hold an election. I know of no specific penalty imposed upon the superintendent for any such neglect of duty, but it might be made the basis of charges against him under Chapter 36 of the Laws of 1909, with a view to his removal from office. You could lay the matter before the grand jury, when it meets, or call it to the attention of the District Attorney, Mr. Kenneth K. Scott, at Roswell.

You also ask what can be done with one who should have a tank of water on his own land on the public range, who puts a fence around it and fixes a gate so that cattle and horses can get in and probably get cut on the fence wires, not knowing how to get out again. Perhaps I do not fully understand the facts, but I cannot imagine that there is any reason why a man should not fence up his own land and keep animals out. Any horses and cattle getting in {*221} there would be trespassing animals. If, however, you mean that in some way, a gate is left so as to induce animals to come in and not permit them to get out, that would present a different question. No man ought to set a trap for animals by which they would be injured, and if he had done so, an action against him for damages could be successfully maintained. I never heard of such a thing, however, and cannot understand how it would be possible.