

Opinion No. 15-1505

April 23, 1915

BY: FRANK W. CLANCY, Attorney General

TO: Hon. H. B. Hamilton, Carrizozo, N. M.

Relative to pay for equipment of county high school, whether payable out of high school fund or from district fund.

OPINION

{*89} Your letter of the 17th inst. was received here day before yesterday, but I have not been able sooner to answer as I thought it desirable to confer with the Department of Education before writing you.

You ask first as to whether school directors have authority under Section 8 of Chapter 57 of the session laws of 1912 to purchase equipment for a county high school and pay for the same out of the high school fund, or whether the same should be paid from the district fund. Under said Section 8 it is provided "That the cost of site, location of building and erection and cost thereof for any such county high school shall be entirely borne by the district where such high school is established." I am unable to see how the district where the school is established can be subjected to any expense whatever except such as may be covered by the above quoted language, and equipment does not seem to fall within the enumeration of the items specified. I have conferred today with Mr. Asplund of the Department of Education and before I had expressed my view he stated his, which is to the same effect as what I now write to you. It is quite true as you say, that if the practice is followed of paying for all equipment from the county high school fund, then during the first year the greater part of that fund would be used for equipment, but this seems unavoidable in the starting of a new school. Very little of the cost of equipment would be required after the first year. As you point out, the county high school fund is to be used for the maintenance and operation of the county high school and such equipment as may be necessary to the maintenance and operation would be an expense of such maintenance and operation.

The next point stated in your letter is as to what is the course of study of a high school to which may be added, by the local authorities, additional branches of manual training, domestic science, the elements of agriculture and commercial science as provided in Section 10 of the same act. I am informed by Mr. Asplund that there is no obligatory course of study provided by the State Board, but the course of study has been largely left to the local boards, subject possibly to some revision or approval by the State Department {*90} of Education, and he says that if the local authorities considered music, about which you specially ask, a proper part of the regular course, they appear to have power to make it so.

Another point about which your write is as to the approval of warrants when there are no funds with which to pay the same. The course which you have heretofore adopted of advising superintendents not to approve warrants unless there were funds in the treasury to pay them, is perhaps a prudent one, but on the other hand, it is provided in Section 1535 of the Compiled Laws of 1897, and this provision is retained by Section 29 of Chapter 97 of the Laws of 1907, that school orders shall draw 6% interest per annum after having been presented to the county treasurer and not paid for want of funds, and this is coupled with the provision that no board shall issue warrants of a school district in excess of the amount of the levy for one year. This may be considered as the last expression of the legislative will on this subject. The Bateman act, as you will see by reference to Section 299 of the Compiled Laws, merely forbids any school district to become indebted or to contract any debts during any current year which, at the end of such current year, cannot then be paid out of the money collected and belonging to that current year. It does not forbid the issuance of warrants when there are no funds on hand with which to pay them, but limits the amount of warrants to be drawn or debts to be contracted to such sum as can be paid from the funds of the current year. I agree with you that the current year as related to school matters is fixed by the definition given in Section 304 of the Compiled Laws, which makes it run from the first day of September to the last day of August of the next year. Taking these statutes altogether, I think it is permissible to approve warrants even though the funds may not be on hand to meet them, provided that the warrants so drawn will not run beyond what can be paid from the funds of the current year.