

## Opinion No. 15-1563

June 21, 1915

**BY:** FRANK W. CLANCY, Attorney General

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

**As to equipment and maintenance of county high schools.**

### OPINION

{\*142} Your letter of the 15th inst. relative to equipment and maintenance of county high schools, reached me yesterday. Your argument is, in substance, that authority to pay for maintenance and operation of the county high school cannot include payment for the equipment necessary for such high school, taking the view that the statute is mandatory as to how the high school funds should be used. On the other hand, it appears to me that the provision as to what should be paid by the school district for the county high school, is equally mandatory and that "the cost of site, location of building and erection and cost thereof," cannot by any possibility be construed to include the equipment. If it could be, then as the school grows and additional courses of instruction are provided, it would still be necessary for the school district to pay for all equipment required for such additional courses. It appears to me that equipment is absolutely necessary for maintenance and operation and can better be considered as included in that language than in the other about the creation of a building.

I cannot agree that the district alone is interested in the building and equipment as the theory of the county high school is that it is an institution created for the benefit of the whole county and not for the benefit of the particular district where it is located. The high school building is not a district building, which school districts have a right, as you correctly say, to furnish with "any equipment {\*143} necessary for the maintenance and operation of their school." The very language which you use shows that in your mind is the same idea which I have, that equipment is necessary for the maintenance and operation, and to my mind, if it is necessary for maintenance and operation, it must be included within that phrase when there is no other provision made for it.

I think we can find but little assistance from authorities, but there are two interesting cases in Texas in which under the constitutional authority to the legislature to "pass local laws for the maintenance of public roads," it is held that this includes the construction of a system of roads in the county. The two cases are *Smith v. Graycon County*, 44 S.W. 921, and *Dallas County v. Plowman*, 91 S.W. 221. Your suggestion that if my construction is correct, "the taxpayers at large, throughout the county, would be required to equip school houses in districts where they did not reside and from which they would derive no benefit," does not appeal to me at all as those very taxpayers must first by their votes establish the county high school, not for the benefit of the district where it is located, but for the benefit of the whole county. The intention of the

legislature was to provide a county institution to be established only by the voters of the county themselves, to the support of which the whole county should contribute and upon the particular district where it was established was imposed the additional burden of furnishing a site and building. If a manufacturer should propose to the citizens of Carrizozo that he would maintain and operate an automobile factory provided that he were furnished with a site and building free of cost, could you possibly construe a contract made on those terms as including the equipment of the building with everything necessary to maintain and operate the factory? Here, the school district is to furnish the site and the building and the county at large is to maintain and operate a high school in the building. I cannot get away from the idea that when the district has provided the ground, erected the building and paid for it, it has done all that the statute requires it to do and that then the county, in the discharge of its duty to maintain and operate the school, must furnish the building with all necessary appliances in order to conduct the school.