

Opinion No. 15-1693

December 1, 1915

BY: FRANK W. CLANCY, Attorney General

TO: Mr. E. F. Funk, Nogal, New Mexico.

In rural districts \$ 90.00 a month must pay salary of first grade teacher and other current expenses. Warrant for teacher's salary, if not paid for want of funds, draws interest at six per cent.

OPINION

{*262} I have just received your letter of the 28th ultimo asking me whether the law regulating teachers' salaries means that a first grade teacher may draw \$ 90.00 per month and the current expense of the school be paid from the funds other than the \$ 90.00 for the teachers' salaries, and also if it is legal for the county superintendent to refuse to approve a teacher's voucher for no other reason than "no funds."

I assume that your first question must refer to the provisions in Section 5 of Chapter 79 of the Laws of 1915, a copy of which you can see in the office of your justice of the peace printed as an appendix to the codification of 1915 of all of the statutes. If you will read that section you will see that the only \$ 90.00 limitation which is mentioned is as to rural school districts where no graded school is maintained, and the limitation to that amount is for all purposes except the construction, purchase, lease, repair or equipment of school houses, and applies to every school room in which a teacher, holding a first grade certificate, is employed. In such rural districts the \$ 90.00 must not only pay the salary of the teacher, but other current expenses. In municipal school districts and in rural school districts, where there is a graded school with at least four teachers, there is no provision on this subject.

As to your second question, the fact that there are no funds in the county treasury to the credit of the district in which a teacher is employed, is not a sufficient reason for the county superintendent to refuse to approve a warrant drawn for teacher's salary. I can readily understand that a county superintendent might take this erroneous view on account of certain statutory provisions prohibiting {*263} indebtedness of school districts beyond the amount which could be paid during the school year, but reference to Section 4855 of the codification above referred to, shows that the legislature contemplated the possibility, and in effect, authorized the drawing of such warrants and their presentation to the treasurer even when there were no funds from which they could be paid. The treasurer, under such circumstances, is to indorse the fact of non-payment for want of funds upon the warrant, and thereafter the warrant draws interest at the rate of six per cent per annum.