

## Opinion No. 16-1744

February 15, 1916

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

**TO:** Mr. John Becker, Jr., Belen, New Mexico.

**Maintenance and operation of county high school.**

### OPINION

{\*313} Your letter of the 10th instant was received on Saturday last, and I have conferred with the State Department of Public Instruction and also with Mr. James, Director of the Taxpayers' Association, and have given a good deal of attention to the matter of which you write. The statute concerning which you ask appears as Section 4970 of the new Codification of the statutes, and is as follows:

"It is hereby expressly 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, and the county high school fund hereinbefore provided for shall be used only for the maintenance and operation of the said county high school or high schools."

This section is so drawn that there is great difficulty in determining where the cost which must be borne by the district, ceases, and where the expense to be borne from the county high school fund, begins. The county high school fund, which is, in effect, a district school fund to be expended the same as other district school funds are expended, is "to be used only for the maintenance and {\*314} operation" of the high school. In the ordinary meaning of the words, and according to the judicial authorities, "maintenance and operation" would naturally refer to something already in existence, which is to be maintained and operated. To maintain an institution is to preserve and keep it up, and yet necessarily in this connection maintenance would mean something more than the mere preservation of the high school in the condition to which it may be brought by the expenditure of the money of the school district. The operation of a school or other institution, means the act of keeping it a going concern. If we limit ourselves to these ideas, it would logically follow that the district must furnish not merely a shell of a building, but a building equipped with all necessary apparatus to be maintained and operated; but practically we know that this cannot be carried out to the fullest extent. I cannot believe that the mere acquisition of ground for the building and the putting up of a building with walls, roof, doors, windows and floors, would be a full compliance with the legislative intent. Certainly such a building would not constitute a school to be maintained and operated. I believe that there must be included in the cost of erection of a school building, at least those things ordinarily necessary for the operation of a school, such as seats, desks, tables, platforms, blackboards, heating and lighting plant, etc. I must confess, however, that I cannot see just where to draw the line at which this

sort of expenditure should stop. Section 4972 requires the district to add to the course of study, additional branches of manual training, domestic science, the elements of agriculture and commercial science. If the district is to be required to put in a supply of all machinery, tools and appliances for these additional branches that expense might well equal, or even exceed, the cost of the building proper, and it is difficult to believe that the statute can possibly mean any such expenditure to fall upon the district alone, and yet how can the school be maintained and operated for instruction in these additional branches unless apparatus and tools are provided? But if any attempt should be made by the district to supply these things, how little or how much would be necessary? Disputes would arise almost immediately as to whether the district had fully performed its part as laid down in the statute, or not. If the district should put in a foot power lathe and say that that was the equipment for manual training, we would all agree that this was a mere sham, but can we say that it should supply a complete set of wood-working and steel machinery with motive power to operate the same? If we come to apparatus and tools for agricultural studies, we might expend thousands of dollars without anything like an adequate amount of equipment.

We must consider that the legislature had in mind what are existing conditions throughout the state and never could have intended that a single district in any county should bear this extraordinary burden of expense. There may be a few districts in the state, like Albuquerque and Roswell, which could afford to make such a large preliminary expenditure, but those places are very few.

The conclusion which I am forced to reach is that the legislature intended that the district where the school is located, should furnish the ground and erect a school building sufficiently equipped {\*315} so that a school can be therein maintained and operated, and that by a justifiable expansion of the meaning of the word "maintenance," the machinery, tools, and other appliances necessary for the additional branches, must be supplied from the county high school fund. Any different construction of the law would result in many places, in the practical nullification of the general intent of the legislature, that there should be county high schools supported by the whole county in which the additional branches mentioned in Sections 4972 can be taught.

While the foregoing is my own opinion, I would not predict, with any great confidence, what the courts would hold if the matter became a judicial question. Some minds would adhere closely to the exact and accepted definitions of "maintenance and operation," so that the district would be required to furnish everything necessary for a school to be maintained and operated, but it appears to me that this would require an unjustifiable expansion of the words of the statute as to the "erection" of the building. It is unfortunate that the statute is worded as it is.