

Opinion No. 16-1822

June 10, 1916

BY: FRANK W. CLANCY, Attorney General

TO: Dr. Frank H. H. Roberts, President, State Board of Education, Santa Fe, New Mexico.

Issuance of teachers' certificates, examinations and qualifications of teachers absolutely under the control of the State Board of Education.

OPINION

{*385} In accordance with the request by the Board that I should examine the statutes relating to the certification of teachers, and especially as to whether, under the last act of the legislature on that subject, which is published as Chapter 81 of the Session Laws of 1915, certificates issued must conform to the limitation contained in Section 4866 of the Codification.

Prior to the adoption of said Chapter 81,, the law on the subject of teachers' certificates was to be found in Chapter 97 of the Laws of 1907, and in Chapter 29 of the Laws of 1912. So much of the law of 1907 as relates to this subject is to be found in Sections 4810 and 4811 of the Codification, while the Act of 1912 reappears in Sections 4863 to 4866 of the same Codification. Section 4810 is the section of the earlier law to be specially considered in connection with Chapter 81 of the Laws of 1915. Section 4810 authorized the State Board to issue three grades of county teachers' certificates, upon examination in such subjects as it may elect, or upon the applicant's presenting grades in the subjects as required by the said Board from any of the educational institutions of the state. The holding of examinations and the manner thereof were left entirely to the Board, under such rules and regulations as the Board might prescribe. Then there are provisions as to the grading of the papers, and the payment of persons employed for that purpose. Holders of the three grades of certificates were entitled to teach for varying terms of years in any school district, independent district, incorporated town, city or village of the state. County superintendents were authorized to renew first grade certificates once only without a formal examination, but only with the consent of the Superintendent of Public Instruction, while boards of education of incorporated cities were authorized to issue teachers' certificates, which would be valid only in the city the board of which issued them. It will be seen that with the exception of teachers in incorporated cities, this statute of 1907 puts the whole subject entirely under the control of the State Board of Education.

The law continued in this condition until 1912, when the act was passed which has already been mentioned. Section 4863 of the Codification provides that the nature of alcoholic drinks and narcotics, and special instruction as to their effect upon the human system, in connection with the several divisions of physiology and hygiene, shall be

included in the branches of study taught in the public schools, and shall be studied and taught as thoroughly and in the same manner as other like required branches are in said schools. {386} Section 4864 requires instruction in this branch of study in the state educational institutions, in the New Mexico Reform School, and in all teachers' institutes. Section 4865 prescribes punishment by removal from office of any officer in control of any school or institution who does not enforce the provisions of the two preceding sections. I may say at this point that these three sections cannot be considered as in any way affected by the legislation of 1915. Section 4866 provides that no certificate shall be granted to any person to teach in the public schools who has not passed a satisfactory examination to enable him to properly teach the branches of study provided for in the three preceding sections. This last section undoubtedly had, at the time of its adoption, the effect of requiring every person who should get a certificate under the provisions of Sections 4810 and 4811, to have passed the examination prescribed. The question now for consideration is whether Chapter 81 of the Laws of 1915 has any effect upon the prohibition contained in Section 4866.

That Chapter 81 distinctly repeals Sections 3 and 4 of Chapter 97 of the Laws of 1907, which are now Sections 4810 and 4811 of the Codification, and all other acts in conflict with the new act. Chapter 81 reproduces all of the substance of Section 4610, with some changes and omissions. The certificates are called "elementary teachers' certificates" instead of "county teachers' certificates," as in the earlier act. The new act makes an unimportant change as to the fund from which services of persons who assist in grading examination papers are to be paid. The authority to county superintendents to renew certificates is omitted, and that power is transferred to the State Board, under such regulations as it may adopt, and teachers in incorporated towns and villages are required to secure their certificates in accordance with the provisions of the act, but the matter of teachers' certificates in incorporated cities is left the same as in the earlier act. The act of 1915 also reproduces, with very slight change, the language of Section 4811, with an additional paragraph which gives the State Board power to issue special certificates to teachers of drawing and other enumerated subjects, in the common or public graded or high schools of the state, "under such regulations as the State Board of Education may adopt."

One of the well settled rules of construction of statutes is that when the legislature legislates upon a subject in such a way as to cover the whole ground, the new statute must be taken as excluding all previous legislation on the same subject. There are indications in said Chapter 81 that the legislature intended thereby to cover the whole subject of the certification of teachers, and to adopt a comprehensive system which would cover everything connected therewith. There is a distinct and definite repeal of the two sections which, as originally adopted, covered the whole subject, although subsequently modified in 1912 by what now appears as Section 4866. If it had been the legislative intent to preserve other statutory provisions on the subject of teachers' certificates, the method adopted would probably have been to amend, by the new statute, the two former sections so as to read differently and as set out {387} in the new statute. If this had been done, the new sections would merely have taken the place of those which were amended, and would have become a part of the whole law contained

in the Codification, and would have been properly construed the same as though the original enactment had been as set out in the new statute. Some significance is to be given to the fact that the form of the new statute is that of original legislation, and must be construed in much the same way as though there had been nothing similar in the antecedent condition of the law.

Considered in this way, we are led to the conclusion that the prohibition in Section 4866 no longer has any place in the legislation on the subject of teachers' certificates, and the whole subject of the issuance of teachers' certificates, and of the examinations upon which they are issued, and of the qualifications of teachers, is left under the absolute control of the State Board of Education. This is emphasized by the provision in the last paragraph of Section 2 of Chapter 81, to which I have already referred, which authorizes special certificates to teachers in certain specified branches "under such regulations as the State Board of Education may adopt."

As hereinbefore stated, there is no doubt that Sections 4863 to 4865 remain unchanged, and as the studies therein prescribed must be included in the course of instruction in the public schools, it is quite within the power of the Board, by regulation, to require evidence of ability to teach in those studies where instruction therein will be required of the teacher. It is within the power of the Board, if it sees fit so to do, to require examination in these branches, or it may adopt any other course in its discretion to ascertain whether applicants are qualified to give that class of instruction.