

Opinion No. 16-1900

November 16, 1916

BY: FRANK W. CLANCY, Attorney General

TO: Hon. Alvan N. White, Superintendent of Public Instruction, Santa Fe, New Mexico.

**Placing of insurance upon school buildings by agents who are school directors.
Employment of first, second and third grade teachers.**

OPINION

{*442} I have your letter of even date herewith in which you ask two questions, the first of which is as to placing of insurance upon school buildings by agents who happen to be school directors.

If you will refer to the published report of this office for the years 1912 and 1913 at page 243, you will find an opinion which I gave to you on this subject which will answer your question, and I think that this opinion must be the one that you have in mind when you say that as you recall, the question had arisen sometime ago in another district but that you had not been able to find in the published reports what I had said on the subject.

Your other question, as I understand, is, briefly stated, that in cases where estimates in accordance with Chapter 70 of the Laws of 1915 have been made for the employment of a teacher holding a first grade certificate, county superintendents have held that holders of lower graded certificates cannot be allowed to teach even if it should be impossible to secure the services of a first grade teacher.

This does not seem to me to be a reasonable position to take. There is no obligation resting upon the school directors or school officers to spend all of the money for which estimates have been made. If the whole of it is not spent it will not be lost but remains on hand for the future. In addition to this, Section 1 of Chapter 81 of the Laws of 1915, to which you call attention, seems to be conclusive, as, among other things, it declares that "Holders of elementary certificates shall be entitled to teach in any school district, independent district, incorporated town, city or village of the state. The authority to employ teachers is given to the school directors and I do not find in the enumeration of the powers and duties of the county superintendent in Section 4834 of the Codification, any arbitrary power to interfere with school directors. The nearest approach {*443} to it is that he should enforce compliance with the school laws, but I cannot discover that there is any violation of the school laws in employing a second-grade teacher instead of a first grade teacher nor can it be said with certainty that every first grade teacher is better qualified to give instruction than every second-grade teacher. It might well be the case that a very superior instructor could not pass the examination to obtain a first grade certificate, and yet be of more value to a school than many of the first grade teachers.