

## Opinion No. 17-2040

August 3, 1917

**BY:** C. A. HATCH, Assistant Attorney General

**TO:** Hon. A. G. Whittier, State Traveling Auditor, Santa Fe, New Mexico.

Increase of School Districts Automatically Increase the County School Superintendent's Salary.

### OPINION

We have your favor of recent date concerning certain conditions in McKinley County, and in reply thereto advise as follows:

Chapter 12 of the 1915 Session Laws provides that County School Superintendents in counties of the third class shall receive an annual salary of \$ 1500.00. Further, in the same act, it is provided that in could not be said there were less than 11 the preceding year, for preceding year, the annual salary of the County Superintendent shall be \$ 750.00. The above provisions governed the salary of the Superintendent in McKinley County during the years 1915 and 1916, assuming, as stated in your letter, that this county was in the third class. You ask, in a case where the number of school districts in a county is increased to more than 11, if such increase automatically entitles the Superintendent the succeeding year to the salary as provided by the classification of counties, or whether the limitation of \$ 750.000 still controls.

To answer this, we must first notice the statute limiting the salary in counties having less than 11 districts, and from it we find the limitation is based on the number of districts in the preceding year. You will observe the language is as follows:

"In counties in which there are less than eleven districts the preceeding year."

We take it the legislature, by using this language meant counties in which there were less than 11 districts throughout the entire preceding year, for, if the number were increased to 12, for instance, it could not be said there were less than 11 the preceding year, for **preceeding year** means the entire year. We are therefore of the opinion that where the number of districts was increased to 11 or more during **the preceeding year**, there were not less than 11 the preceding year, and this statute would not limit the Superintendent's salary for the next year unless the classification under this provision would hold until 1917, when the new classification, as provided by the salary act, should be made. The classification required to be made in 1917 by the statute is to be based on the assessed valuation of the county. It nowhere makes any provision for a new classification as to the number of districts in a county, and no method is laid down for the determination of the number of districts for the purpose of fixing the Superintendent's salary. The classification according to assessed valuation could have

no bearing on the Superintendent's salary as regards limitation as to the number of districts. Such classification could determine nothing in such regard. We are therefore of the opinion that the provision of the statute providing for the new classification in 1917, and that the classification therein contained holds until 1917, is not applicable to the other provision wherein the salary of the Superintendent is limited to \$ 750.00 in counties having less than 11 districts. We are also of the opinion that the increase of districts to more than 11 automatically increases the Superintendent's salary for the next year to the sum of \$ 1500.00. In the case of *State ex rel Smith v. Neal*, County Auditor, decided by the Supreme Court of Washington, reported in 65 Pac. 188, the court held, in a case where a clerk's salary was fixed according to the population, and no provision was made in the statute for taking a census or otherwise determining the population for the purpose of classification, that the County Commissioners, being charged by the law with the financial management of the county affairs, could determine the fact of population by proof, and that, upon the county's population being increased and such fact being shown to the County Commissioners, the clerk's salary was automatically increased in accordance with the increase in population. We think the reasoning in this case will hold when applied to the question presented by you, and that the County Superintendent of McKinley County was entitled to the salary of \$ 1500.00 for the year 1916.

In this connection, we might suggest that the Attorney General, Mr. Harry L. Patton, in a recent opinion addressed to the County Clerk of McKinley County, Mr. F. W. Meyers, held that the two school districts on the Fort Wingate Military Reservation were authorized by law and should be included in the count of districts in McKinley County for the purpose of fixing the Superintendent's salary. We mention this for the reason that, if these districts were not counted in the years mentioned by you, and if now included, they might show that the districts of McKinley County during the years 1915 and 1916, and perhaps before, were really more than 11. If this should be true, the question raised by your letter is answered by the opinion of Mr. Patton to the County Clerk, a copy of which is attached hereto for your information; if not, the opinion herein expressed is our idea of the law governing this situation.