

Opinion No. 17-2029

July 24, 1917

BY: HARRY L. PATTON, Attorney General

TO: Hon. Jay T. Conway, County Superintendent, Raton, New Mexico.

County Boards of Education Are Now Authorized to Change Districts and to Select Location of School Houses.

OPINION

I have had your letter for some time in which you ask for a construction of various provisions of our school law. In the first question you submitted, you state that at Dawson, Miami and two or three other places in your county, you have schools in unincorporated districts supporting four or more school rooms in one building. You ask whether or not the limitation of expenditure of \$ 90.00 per month for each room applies to such schools.

Section 5, Chapter 79, Laws of 1915, limits the expenditure per month for each room to \$ 60.00, in which a teacher holding a third grade certificate is employed, to \$ 75.00. in which a teacher holding a second grade certificate is employed and to \$ 90.00 in which a teacher holding a first grade certificate is employed. According to the language of the act, however, this limitation applies in rural school districts, "where no such graded school is maintained." The preceding part of the section refers to school districts in which there is established a graded school with at least four teachers. In my opinion, this limitation does not apply to schools where there is established a graded school with at least four teachers. This view was also expressed by my predecessor, Honorable Frank W. Clancy, in opinion numbered 1693, written December 1st, 1915, to Mr. E. F. Funk, of Nogal, New Mexico.

You further ask for a construction of Section 4840, Codification of 1915, as to the question of determining what is a majority of legal electors residing in a proposed district. Mr. Milton J. Helmick, Assistant Attorney General, on January 25th, wrote you a letter in which he expressed the views of this office as to what constitutes a legal elector in such proceedings. This section of the statute was in full force and effect at that time. Since then, however, this section has been repealed by Section 45, Chapter 105, Laws of 1917. Since the repeal of said section, the only provision which I can find which relates to the changing of boundaries, abolishing, altering and consolidating school districts, is found in Section 7 of said Act of 1917, and I refer you to the same. The authority in such instances is conferred upon the County Board of Education by said section. While there is great latitude in the authority conferred upon the County Board of Education by this section, the details of procedure are not set forth as in the old act.

You further ask as to where the authority is lodged for controlling the location of school houses and state that you have been unable to determine whether the same remains in the local school board, or whether it is given to the now County Board of Education. Section 4898, Codification of 1915, authorizes school directors to procure sites for school purposes, and, evidently, authorizes them to select the same. Section 4845, Codification of 1915, reads as follows:

"It shall be lawful for any district to take and hold in its corporate name so much real estate as may be necessary for the location and construction of a school house and convenient schools: Provided, That the real estate so taken, otherwise than by consent of the owner, shall not exceed one acre. The site so taken must be situated on some public highway or thoroughfare."

By section 15, Chapter 105, Laws of 1917, the last named section was amended to read as follows:

"No public school houses or buildings shall hereafter be situated or erected except upon a public highway or thoroughfare."

You may note that the greater part of the original section was eliminated by this amendment.

By reading the provisions of Sections 7 and 8 of the Act of 1917, referred to, I am of the opinion that it was the intent of the legislature to vest in the County Board of Education the right to select and control the location of school houses in rural districts.