

Opinion No. 19-2178

January 29, 1919

BY: HARRY S. BOWMAN, Assistant Attorney General

TO: Board of Education, Springer, N.M.

County School Superintendent and Teachers Required to Enforce Compulsory Vaccination Law.

OPINION

I have a letter under date of January 26th from a member of your board, making inquiry concerning the duties of the board in connection with the law providing for compulsory vaccination of school children, and in reply wish to advise you as follows:

Article V of Chapter 92, Code 1915, contains all of the laws of the state in connection with the subject of vaccination. Section 4617 of the Code, a part of the above mentioned chapter, provides that it shall be the duty of the school superintendent of each county to see that all school children in his county, of school age, are vaccinated against smallpox, and to that end, each teacher in a public school shall see that the children in his district are successfully vaccinated or have been vaccinated within one year previous, and it shall be unlawful for any child to attend school, or for any teacher to allow such child within any school house unless so vaccinated, or showing proper certificate that it has been vaccinated, the teacher making a report of the number of children whom they have caused to be vaccinated and those who have presented certificates that they have been vaccinated, to the county school superintendent at the beginning of the school year and as often thereafter as they may deem necessary, together with a report of the names of any parents who refuse to allow their children to be vaccinated, and that any person who shall so refuse or neglect to have his children vaccinated in accordance with the law shall be subject to penalty.

It would appear therefore from the foregoing that the duty of having school children vaccinated falls not upon the school board or board of directors, but upon the superintendent and the teachers, and it is my opinion that no action of any kind is required by the board in connection with the vaccination of the school children within your district.

This office is aware of the fact that this law has never been enforced in very many of the school districts of the state, but nevertheless the law is valid and subsisting, and a failure to comply with it does not have the effect of invalidating it in any respect.

Section 4621 provides a penalty for any person violating any of the provisions of the chapter, or of any of the rules and regulations adopted by the board of health with regard to the matter of vaccination, and I assume that the county superintendent and

the teachers would be subject to prosecution under the provisions of this section if they failed to comply with the law in connection with the compulsory vaccination of school children.

Section 4618 of the Code provides that the vaccination shall be done by the county health officer, or by his assistants, or under his direction, and that the same shall be paid for by the parents of the children where they are financially able to do so, but that in case of their inability to pay for such vaccination by reason of poverty, that then the board of education or school directors of each district should pay for same out of the school funds.

I am doubtful as to the authority of the assistant county health officer to enforce these regulations without some order from the board of health, but I am of the opinion that the teacher in each room should see that the provisions of the statute are complied with.

Trusting that the foregoing satisfactorily answers your inquiries, I am,