

Opinion No. 19-2378

October 3, 1919

BY: HARRY S. BOWMAN, Assistant Attorney General

TO: Miss Maud A. Fielder, County Superintendent of Schools, Silver City, New Mexico.

Definition of School Day. Salary of County Superintendent.

OPINION

We have your letter of the 27th ultimo containing two inquiries, which will be answered in the order propounded in your letter.

The first inquiry is regarding the construction of Section 4849, Code 1915, regarding the meaning of the terms "a school day shall consist of six hours."

We are of the opinion that the noon hour is included in the period of six hours and that it is not necessary that the session of school or day shall consist of six hours in addition to the time taken up for meals, recesses, etc.

Your second inquiry is in regard to the salary of the County Superintendent of Schools for the period between January 1 and the date that "the County Commissioners have accepted the bond and sworn in the new incumbent."

We know of no statute which requires the bond of the County Superintendent of Schools to be accepted by the County Commissioners, nor that the County School Superintendent should be "sworn in by the County Commissioners." If the bond and oath of the newly elected officer is filed on the first day of January, then that person is entitled to the salary from the date of filing of such bond and oath. If, however, the bond and oath were not filed on that date the salary of the newly elected officer would begin from the date of such filing, and the predecessor in office would be entitled to the salary for the period up to the date of the qualifying of the new official, which qualification takes place at the time of the said filing.

Section 4832, Code 1915, provides that the County Superintendent shall hold office for two years, or until his successor shall have been duly elected and has qualified.

This section, therefore, authorizes the former official to hold over and remain in office until the qualification of the newly elected superintendent and the superintendent qualifies, as has been heretofore stated, by the filing of the oath and bond. The provisions for the oath and bond are contained in the section following, and provide that before entering upon the discharge of the duties of the office the oath shall be taken and filed in the office of the County Clerk, and within thirty days after receiving the certificate of election a bond should be approved by and filed with the Board of County

Commissioners. If the new incumbent has failed to file the bond within the period prescribed in this statute, then he should do so sufficiently soon thereafter to enable him to qualify upon the date mentioned in the previous section -- that is, January 1, 1919. A failure by the Board of County Commissioners to approve the bond, however, will not prevent the incumbent from assuming his office upon the said date.