

Opinion No. 23-3694

April 17, 1923

BY: MILTON J. HELMICK, Attorney General

TO: Requested by: Isabel L. Eckles, Superintendent of Public Instruction, Santa Fe, New Mexico.

Under the School Code (Chap. 148, Laws 1923) the "Clerk" of the County Board of Education is an Appointee of the School Superintendent and May be Paid a Salary While the "Secretary" of the County Board of Education is the County Clerk and no Extra Compensation can be Paid to this Officer.

OPINION

{*43} This inquiry arises upon the construction of Sections 802 and 406 of the School Code enacted by the recent legislature. Section 406 reads as follows:

"When budget allowance thereafter shall be made, the County Superintendent, with the consent of the County Board of Education, may employ a clerk. Such clerk shall also be the clerk of the County Board of Education, who shall receive a salary not in excess of \$ 900.00 per annum."

Section 802 reads as follows:

"The Chairman of the Board of County Commissioners shall be ex-officio president of the County Board of Education, and from the remaining two members said Board shall elect a Vice-President. The County Clerk shall be the secretary of the County Board of Education. For attendance at meetings of the County Board of Education the members shall receive two dollars and fifty cents per day of actual attendance, plus actual traveling expenses to and from meetings not to exceed ten cents per mile each way.

"At least four meetings of the County Board of Education shall be held annually. Provided, however, that when meetings of the County Commissioners and County Boards of Education are held on the same day no additional compensation under this section shall be allowed the members of the County Board of Education for board attendance."

It has been suggested that these sections present a conflict because 406 authorizes the Superintendent to employ a clerk who shall also be clerk of the County Board, while Section 802 prescribes that the County Clerk shall be Secretary of the County Board of Education.

{*44} I think there is no inconsistency in these sections; 406 refers to a "clerk," and 802 refers to a "secretary." It is true that the terms "clerk" and "secretary" are sometimes

synonymous and are used interchangeably and courts have so decided, but where the context of a statute indicates that the words are not intended to be synonymous, then it is clear that a "secretary" is one thing and a "clerk" another. I think it is obviously the intention of the legislature that the clerk mentioned in section 406 is an office employee to be employed by the County Superintendent. This person is the employee of both the County Superintendent and County Board of Education and I presume that such clerk should carry on his duties in the County Superintendent's office. This clerk may receive a salary of not exceeding \$ 900.00.

On the other hand, the provisions of Section 802 simply mean that the County Clerk shall be the Secretary of the County Board of Education in the same manner that the County Clerk acts as Secretary of the Board of County Commissioners. The duties of the County Clerk would be purely secretarial and, in my opinion, he cannot receive any extra pay therefor. The County Clerk cannot be employed as the clerk contemplated in section 406. Section 802 merely prescribes a new duty of the county clerk in addition to the other duties of his office, and, under a familiar and well settled principle of law, no extra compensation can be received by the County Clerk in the absence of definite and specific authorization.

I think the intention of the legislature is manifest that the clerk mentioned in section 406 is an employee of the County Superintendent's office and that this position has and can have no reference whatever to the county clerk.