

## Opinion No. 23-3695

April 20, 1923

**BY:** JOHN W. ARMSTRONG, Assistant Attorney General

**TO:** Requested by: Hon. R. W. Foard, Supervisor Agriculture, Dep't Vocational Education, and Hon. J. E. Owens, Educational Budget Auditor, Santa Fe, New Mexico.

**The Law Permits Combining Average Daily Attendance of Two Schools and Employment of Agricultural and Home Economics Teachers to Serve the Two Schools Provided the Combined Attendance on the Two Schools will Equal or Exceed 138.**

### OPINION

{\*44} We quote your inquiries and offer our views on the several questions as follows:

Question No. 1:

"Is an instructor of vocational agriculture in the high school considered a special teacher as defined by the new School Code?"

Opinion on Question No. 1:

Under the provisions of Sec. 1426, Senate Bill No. 112, (1923 Act), the term "grades" seems to apply to high schools as {\*45} well as to other sub-divisions of the public schools. Sec. 1418 of said Senate Bill empowers the State Board of Education to prescribe vocational agriculture in the school grades, but, on information furnished by your departments, we are given to understand said Board has not prescribed the subject in question to be taught in the high schools. If taught in the high schools, we, therefore, conclude it would be a special subject. In **any** grade where vocational agriculture may be taught, when so prescribed, we think it would doubtless be a regular subject. It would seem that any subject taught in any grade, whether classified under kindergarten, primary, intermediate, grammar or high school, not prescribed by said State Board is a special subject, and the teacher of such might be termed a "special teacher." Said Sec. 1418 prescribes that the certain subjects therein named **shall** be taught in the public schools. But, considering the provisions of said Sec. 1104, we further conclude that teachers for special subjects are authorized for the instruction of high school pupils only.

Sec. 105 of the 1923 Act at sub-sec. (c), also gives said State Board powers in connection with the question under consideration.

From the foregoing, then, the conclusion will naturally follow that "regular subjects" are such only when confined to the specific grades designated by said State Board.

Question No. 2:

"At Dexter and Hagerman there is an agricultural teacher who devotes a half day at Hagerman and the other half day at Dexter. The new School Code requires that the average attendance of a high school be at least fifty students before a special teacher may be employed. It is probable that neither of these schools has an average attendance of fifty high school students. The combined attendance of the two schools which are served by this one man, however, would be near one hundred. Can these two schools legitimately employ an agricultural teacher under these conditions?"

Opinion on Question No. 2:

One teacher of special subjects is authorized for every fifty regularly enrolled high school pupils, or any major portion thereof above that number in average daily attendance. Sec. 1104, said School Code. Example: Where the average daily attendance may be seventy-six regularly enrolled high school pupils, notwithstanding such pupils may belong to more than one high school, the law authorizes two teachers of special subjects.

In addition to said two teachers, a high school, having such number, may have one more where such teacher is qualified to teach English and Spanish and does teach classes in Spanish -- in all, three teachers of special subjects. No high school, however, may have more than six teachers of special subjects.

Question No. 3:

"In Colfax County there is a vocational circuit consisting of four rural schools. These schools are under the supervision of the county superintendent of schools. An agricultural teacher and a home economics teacher are employed to spend one day each week in each of these four rural schools. Most of these schools offer some high school work. A large percentage of the students enrolled {46} in the work, however, are in the grades. One-half of the salaries of the instructors is paid from the county school fund and the other half paid from the state and federal vocational fund. The question now is whether or not the county can employ instructors for this purpose."

Opinion on Question No. 3:

Before any one of such schools is entitled to more than one teacher, it shall have an average daily attendance of, at least, thirty-eight pupils. -- Sub-sec. (a) of Sec. 1104, Senate Bill No. 112, (1923 Act).

Before the four schools would be entitled to more than four teachers, they would necessarily require a combined average daily attendance of, at least, one hundred and thirteen pupils.

Having in mind the provisions of Secs. 501 to 507, incl., of said Senate Bill No. 112, and the fact that the circuit system of education is recognized as a legitimate expenditure of Federal vocational funds, we think the law will permit combining the average daily attendance and employment of Agricultural and Home Economics teachers, provided such combined attendance will equal or exceed one hundred and thirty eight.

Each district, probably, should contribute toward the payment of such additional teachers in the proportion that the number of children of school age in such district bears to the total number of such children within the four districts.