

Opinion No. 23-3707

May 17, 1923

BY: MILTON J. HELMICK, Attorney General

TO: Requested by: State Tax Commission, Santa Fe, New Mexico.

Principals, Supervisors, Inspectors, Etc., are not Teachers Within the Meaning of Sec. 1104 of the School Code, Chap. 148 of the Laws of 1923 Fixing Number of Teachers Which may be Employed According to Attendance.

The Term "Teacher" Defined.

OPINION

{*57} This inquiry arises on the construction of Section 1104 of the new School Code which provides, among other things:

"Not more than one teacher shall be employed:

- (a) In rural schools, to every twenty-five pupils or major fraction thereof;
- (b) In municipal schools, to every thirty-five pupils, or major fraction thereof, and
- (c) In high schools, to every twenty pupils, or major fraction thereof."

In connection with the preparation of budgets for the coming year, it is asked whether the word "teacher" in the foregoing portion of section 1104 includes principals, supervisors and the like, or whether it means merely teachers engaged exclusively in ordinary teaching of pupils. It is said that if the word "teacher" is to be given the broad construction of including the principals, supervisors and the like, the result will be a serious demoralization of the school systems in the larger towns and cities of the state. This unfortunate circumstance, however, should not be allowed to influence the construction of this section, but the law should be construed to ascertain the true legislative intent, no matter what the effect. I have tried not to allow any considerations of expediency to influence me in attempting to construe this section of the School Code.

I have found a number of judicial definitions of the word "teacher," but none of them are particularly helpful in this instance because none of them are made in connection with a statute, such as the one under consideration. I find, in some instances, that courts have held that the word "teacher" includes supervisors, principals and the like, while in other cases the courts have held that the word "teacher" is to be narrowly construed, and does not include supervisors, principals and school employees not exclusively employed in actual daily teaching. The definitions which the courts have made appear to depend largely upon the sort of statute under consideration; for instance, in cases

dealing with teachers' pensions I note that the courts are inclined to give a broad definition of the word "teacher" so as to permit supervisors and principals the {58} benefit of the pension laws. I find also that the word "teacher" is defined by statute in some states. In the case of Hallett v. Post Printing Company, 192 Pacific, 658, the Supreme Court of Colorado, in a case involving the right of the School Board of Denver to employ doctors and nurses, and other employees, to make physical examinations of the school children and attend to their health and physical welfare, held that the Board could legally employ these persons under its right to employ teachers. The court remarked that if such employees were inspecting the children and directing what was to be done for their physical education, they were certainly teachers, as well as those principals of large schools who do not actually teach. This opinion presents the broad definition of the term "teacher," in a case where it was apparently appropriate to the Public Welfare to assert an inclusive definition instead of an exclusive one.

In the case of Barry vs. Goad, 27 Pacific 785, the Supreme Court of California asserted the narrow definition of the term "teacher," and held that inspectors and supervisors were not teachers, and that the School Board could not legally employ them under the guise of employing teachers.

In the case of Barranger vs. Board of Education, 125 N. Y. Supplement, 540, the narrow definition was asserted by the Court of Appeals of New York which held that a principal of a school was not a teacher under a statute which provided that a teacher could not be transferred without his consent. The court held that a principal was not a teacher under this statute, and therefore, could be transferred without his consent.

In the State of Idaho the pension law specifically defines the word "teacher," as used in the act, which definition covers principals, supervisors, professors, supervising principals and superintendents. Apparently the Legislature of Idaho deemed it desirable to make the definition to obviate any such question as we are considering now in connection with the School Code. The teachers' pension law of the State of Ohio also defines the term "teacher" to make it include superintendents, principals and special teachers.

As I said near the beginning, these cases are perhaps not very helpful but I think they indicate that the courts will give either a broad or narrow construction of the word "teacher" in order to effectuate the legislative intent as the exigencies of the case may require. Then, too, it is perhaps significant that the legislatures in other states have felt it advisable to enact broad definitions of the term in connection with pension laws for fear that the use of the word "teacher," without any definition, would not extend to pensions for principals and the like.

I am inclined to believe that it was not the intention of the New Mexico Legislature to use the word "teacher" in Section 1104 of the School Code, in the broad sense. This section bases the number of teachers which may be employed on the number of pupils, and it seems reasonable that, in making this limitation, the legislature had in mind only those teachers who would actually give direct instruction. If the word "teacher" was

intended to apply to principals, supervisors, inspectors and the like, some other basis of limitation, rather than the number of pupils, might have been more appropriate.

I cannot perceive in this section, nor in the remainder of the School Code, anything which would lead me to believe that the {*59} legislature intended the broad construction of the word "teacher" instead of the restricted one.

It is my opinion that the word "teacher" in Section 1104 of the new School Code is used in the restricted sense, and does not include supervisors, principals, inspectors and the like, and I do so advise you. If any interested person believes this opinion is wrong, I hope that a test case will be instituted, and speedily prosecuted, so that the courts may settle the matter.