

Opinion No. 24-3758

February 21, 1924

BY: JOHN W. ARMSTRONG, Assistant Attorney General

TO: Requested by: Hon. R. H. Carter, State Comptroller, Santa Fe, New Mexico.

School Authorities May Not Make Expenditures Not Connected with the Proper Conduct of Public Schools.

OPINION

{*131} Your inquiry follows:

"Your attention is hereby directed to a report of the examination of the records of the Board of Education and of the County School Superintendent of McKinley County, and for the period as indicated on the first page of this report.

"Please note that the Auditor charges the former County School Superintendent among other things, with the unlawful expenditure of certain funds, and your advice is respectfully requested as to the proper procedure to be followed by this office in the recovery of any funds unlawfully expended by the former County School Superintendent, with the consent of the former County Board of Education.

"An item to which your attention is particularly directed is the payment of approximately \$ 700.00 for Attorney's fees in the prosecution of a suit which it appears to the State Comptroller the former County School Superintendent or his bondsmen should be called upon, and compelled if necessary, to restore to the fund out of which this charge was paid."

The suit was not instituted by the County Superintendent of Schools, as you supposed, but by the McKinley County Board of Education. The case is reported at 28 N.M. 221.

At the time of the transaction you mention, Sec. 8 Chap. 105 S. L. 1917, was still in force and the Board of Education has extensive powers. See Nohl v. Board of Education, 27 N.M. 235.

The questions then arise as to whether or not school funds were misapplied or misappropriated, or whether or not the expenditure was "connected with the proper conduct of the public schools."

It is safe to say that the school board and County Superintendent of schools exceeded their authority in the making of excessive {*132} payments to teachers if your inquiry correctly states the facts. These officials would be liable under the provisions of Secs. 4

and 7 Chap. 188, S. L. 1921; and Sec. 3 Chap. 190, S. L. 1921. These sections were in force at the time of the irregularity of which you complain.

As to the payment of \$ 700.00 to a lawyer to conduct the court proceedings in question, this presents a question rather more difficult. It is not unlikely the board believed it could procure better teachers by making these additional payments and thereby provide better schools. If the Supreme Court had decided the case according to the board's contentions, the expenditure may have been legitimate. The court, however, having taken a contrary view and the board having been theretofore advised as to a proper construction of the law, the question of its good faith may become an element for consideration. It is doubtful whether "such expenditure can be reasonably said to be conducive to the proper conduct of the school."

If it becomes necessary for you to take action on excess payments to teachers, we would advise that the lawyer's fee also be included.