

Opinion No. 26-3904

August 3, 1926

BY: ROBERT C. DOW, Assistant Attorney General

TO: Mr. R. H. Carter, State Comptroller, Santa Fe, New Mexico.

This Office is in receipt of your request for an opinion relative to the salaries of County school superintendents during the period for which Chapter 148 of the Laws of 1923 was effective. § 401 of said chapter is as follows:

"The office of County School Superintendent as it existed immediately prior to the passage of this Act is hereby recognized and confirmed. After January 1, 1925, the elective office of County School Superintendent is abolished, and each County Board of Education shall thereafter employ a County School Superintendent for a contract term of two years, or two and one-half years in the case of the first Superintendent employed hereunder. The County Board of Education shall fix the compensation of said Superintendent at not less than \$ 1,500.00 or more than \$ 2,500.00 per annum. Said Superintendents shall be removable from office by said Boards for just cause. Except the first County School Superintendent employed hereunder, said Superintendents shall take office July first."

There are three features of the above section of our statute which, in my opinion, are unconstitutional.

1. The legislature attempts to make an appointive officer out of an officer who must be elected under § 2 of Article 10 of the Constitution, which is as follows:

"All county officers shall be elected for a term of two years, and after having served two consecutive terms, shall be ineligible to hold any county office for two years thereafter."

The above section of the Constitution provides that officers shall be elected for a term of two years, and the statute provides that the County Board of Education shall employ a county school superintendent for a contract term of two years, or two and one-half years in the case of the first superintendent employed.

3. The statute attempts to delegate to the County Board of Education the power to fix the compensation of said school superintendent at not less than \$ 1,500.00, nor more than \$ 2,500.00 per annum.

§ 1 of Article 10 of the New Mexico Constitution vests in the legislature the authority to fix salaries for all county officers, and while I seriously doubt whether or not this authority to fix salaries could be delegated to the County Board of Education inasmuch as the appointment of such an officer by the Board of Education would be a nullity, then the provision prescribing a salary for such officer would also be a nullity. I am of the

opinion that salaries of county school superintendents are governed by the salary law Chapter 12, Laws of 1915, and Chapter 64 of the Laws of 1925, and inasmuch as the Constitution of New Mexico prohibits the increase or decrease of the salary of county officers during their term, Chapter 64 of the Laws of 1925, in so far as it relates to the salary of a school superintendent, could not become effective until January 1, 1927, and aside from this constitutional prohibition, I am of the opinion that said Chapter 64 of the Laws of 1925 is prospective in operation and was not intended to change the salary of superintendents then in office. The salaries of school superintendents prior to January 1, 1927, being governed by Chapter 12 of the Law of 1915 are subject to change with the change of the classification of counties as provided for in § 19 of Chapter 12 of the Laws of 1915.