

Opinion No. [29-72]

August 12, 1929

BY: J. A. MILLER, Assistant Attorney General

TO: Miss Ruth F. Garnes, County Superintendent of Schools, Mosquero, New Mexico.

SCHOOLS -- Teachers' rights under contract.

OPINION

Reference is made to yours of the 8th instant, in which you ask our opinion relative to a situation which has arisen in your county.

In your letter you state that a district for which a teacher has already been employed upon the recommendation of the district and with whom a contract has been signed has petitioned for a truck route to a consolidated school. This, you think, falls within the provisions of Section 805 of the School Code and also constitutes breach of contract with the teacher, who you say is an experienced teacher with First Grade Certificate. You also say that the district so petitioning has an excellent building, warm and well lighted.

Because of the limited information furnished by your letter, I may not get the correct viewpoint. You refer to a petition for a truck route. I do not see that this falls at all within the provisions of Section 805 of the School Code which provides a procedure for the consolidating of schools. If what is sought is really a consolidation, you are right in holding that no consolidation can be effected this year. A petition for a consolidation must be filed between January 1 and April 1 and submitted to a vote.

If after a favoring vote the County Board of Education should order the consolidation, it then could not become effective until July 2 next following the making of such order.

The right of a school board to discharge a teacher rests in part upon the law and maybe within limitations controlled by the provisions of the contract such board has made with the teacher. A board, however, having contracted with a teacher, may not discharge such teacher without cause nor without a hearing. See Section 1105 of the School Code. When we say "without cause" we mean, of course, some dereliction, failure of qualification or breach of contract on the part of the teacher, which would justify the board in terminating the contract. A mere change of plan on the part of the board would not constitute a cause.

I have been unable to find any specific statutory authority for the making of contracts for the transportation of pupils. I assume that boards act under the general powers entering into such contracts and there are various provisions in the statutes for including the costs of transportation in the budget.

I hope your difficulties may be solved without complication.