

**Opinion No. [29-76]**

March 14, 1929

**BY:** M. A. OTERO, JR., Attorney General

**TO:** Mr. Willis A. Ocker, Aztec, New Mexico.

SCHOOLS -- Vaccination of pupils.

**OPINION**

I have your letter of the 11th instant in which you make reference to your little girl, seven years of age, and the requirements of the New Mexico statute relative to vaccination of school children. You ask to be informed as to whether or not vaccination of school children is compulsory in this state.

The answer to your question is to be found in sections 28, 29 and 30 of chapter 85 of the Session Laws of New Mexico for 1919.

Section 28, which, because of its length and because bearing on a number of things not pertinent to this inquiry, is not quoted in full, makes it the duty of the school superintendent of each county to see that all children in each county, of school age, are vaccinated against small-pox, also makes it the duty of each teacher of a public school to see that the children under his control have been successfully vaccinated and provides further;

"\* \* \* any person who shall refuse or neglect to have his or her children vaccinated according to the law shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than ten (\$ 10.00) dollars, nor more than one hundred (\$ 100.00) dollars, or imprisoned in the county jail not exceeding one hundred (100) days."

Section 29, as amended by section 14, chapter 145, Laws of 1921, is as follows:

"The vaccination required in the next preceding Section may be done by any licensed physician or under his direction, and shall be paid for by the parents of such children, when they are able to do so, but in case of their inability to pay for the same by reason of poverty, then such vaccination shall be done by the County Health Officer or under his direction, and shall be paid for by the county or municipal board of education. Provided, that inoculation for the prevention of smallpox by the internal use of variolinum taken under the direction and care of a licensed physician may take the place of vaccination with cowpox where inoculation by vaccination is required by this act. Provided, further, that no health officer who is employed to give his entire time to the duties of his office shall receive any fee or payment other than his regular salary for performing the work required by this Section, but in such case the Board of Education

shall defray the expenses for vaccine and other supplies incurred by the county health officer in carrying out the provisions of this Section."

Section 30 follows:

"Any minor child, through its parent or guardian, may file with the health authority charged with the duty of enforcing the vaccination laws, the certificate of a duly licensed and practicing physician stating that the physical condition of such child is, at the time, such that vaccination would seriously endanger the life or health of such child, and thereupon said child shall be exempt from the provision of sections 28 and 29 of this act, but shall not be exempt from the quarantine laws, rules, and regulations."

From what has been said and quoted above you will see that the answer to your inquiry is that vaccination of children of school age is in this state compulsory.

Although not asked for in your letter, you probably will desire to consider in connection with your question, the requirements as to school attendance. Section 1203 of chapter 148 of the Laws of 1923 makes it compulsory that children between the ages of six and sixteen years, both inclusive, shall attend the public schools of the state or some other school maintaining courses of instruction approved by the State Board of Education, and making exceptions in the case of those mentally or physically unfit or incompetent, and those residing more than three miles from public school houses, etc. And Section 1210 of the same act makes the parents, guardians and persons having control of children subject to the provisions of the act responsible for the public schools attendance of such children and provides a fine of not less than five (\$ 5.00) dollars nor more than one hundred (\$ 100.00) dollars, or imprisonment in the county jail not less than five (5) nor more than ninety (90) days, and further subjects them to a writ of mandamus out of the District Court, for violation of the act.

Hoping that the above will make clear to you the statutory provisions related to this matter and assuring you of the desire of this office to be of service, I am