

**Opinion No. [30-95]**

March 1, 1930

**BY:** J. A. MILLER, Assistant Attorney General

**TO:** Mr. E. Edgar Fuller, Principal, Virden Schools, Duncan, Arizona.

SCHOOLS -- Municipal school districts effect of incorporating of town.

**OPINION**

I have yours of the 24th inst. in which you submit a question as to the management of the public school at Virden which you advise us is the community which has incorporated as a village and is planning to become a full fledged municipal school district on March 2, when, you say, the municipal board goes into power under the provisions of the Code.

This situation was before us recently in connection with a letter submitted by Mrs. Olivia M. Wells, County Superintendent of Schools, Lordsburg, New Mexico, through the office of the State Superintendent of Public Instruction.

There are certain facts not in our possession which might, and which do have a bearing on the situation and lacking which we are unable to answer specifically your question. I may say, however, that the mere incorporating of a town or village and the election of officers for such municipality does not in itself create a municipal school district. Such towns or villages, including the territory annexed thereto for school purposes, becomes municipal schools or school districts only upon the certification of the State Superintendent of Public Instruction. Section 901 of Chapter 148 of the Laws of 1923, which now appears as section 120-901 of the Compilation of 1929, is as follows:

"Except as otherwise provided in section 817 (120-817 hereof) cities, towns, and villages including territory annexed thereto for school purposes shall be known as municipal schools and districts."

Section 817, to which reference is made in the above quotation, provides that the existence of non-existence of a municipal school district shall depend upon the average daily attendance for two consecutive school terms as certified to the State Superintendent of Public Instruction and that "such districts shall become municipal districts upon the certification of the State Superintendent of Public Instruction and shall be governed in all respects as municipal school districts. 120-817, Compilation of 1929.

I am not advised as to whether or not an attempt has been made to elect a municipal board of education. I am satisfied, however, that there is no legislative authority for the election of such a board in connection with the election of municipal officers for the new village and from such information as we have I may say that it would appear that School

District No. 2 in Hidalgo County is yet a rural district and will so remain until the certification, provided for in section 817, has been made. Of course, if the required attendance has been certified to the State Superintendent and he in turn has certified this district to be a municipal district, the situation is different although, as I have suggested, there can be no regular municipal board of education in existence at this time. As our statutes now stand there is no provision for a first election or other means of organizing the first board in a municipal school district. There are sections providing for a board of education; the election of which is to be held on the second Tuesday of February in each odd numbered year. The election here provided, however, contemplates a board of five members already organized, the terms of two or three of which will expire.

Most of the foregoing statements are quoted from an opinion rendered the State Superintendent of Public Instruction and the County Superintendent of Hidalgo County on February 19, 1930. I assume that through those offices this matter will be straightened out so that there will be no disagreement as to the management of school affairs in the Virden District, which I understand is school district No. 2 of Hidalgo County.