

Opinion No. [30-96]

February 19, 1930

TO: Office of the Attorney General of New Mexico

SCHOOLS -- Municipal school districts effect of town incorporating.

OPINION

I have yours of the 14th inst. with which you enclose a copy of a letter from Olivia M. Wells, County Superintendent of Schools at Lordsburg, New Mexico.

You ask for an opinion on the following question:

"If a town or community votes to incorporate as a municipality, when does the management of the public school pass from the county board of education to the municipal board of education?"

The letter from the county superintendent explains that the town of Virden in School District No. 2 in Hidalgo County is incorporating a village or town and expected to vote on their officers Thursday, February 13, 1930. She asks to be advised as to what effect that will have in re the control of the county superintendent and county board of education over Virden school for the rest of this school year.

After a very careful search, I am convinced that we have no statute providing for such a contingency. A similar situation arose when the Hon. Alvin N. White was State Superintendent of Public Instruction and the late Frank W. Clancy was Attorney General. Attorney General Clancy, on October 30, 1915, discussed the situation in his opinion No. 1665 as published, and reached the same conclusion as that above expressed, that is, that there was at that time no legislation to provide for such a contingency.

The Legislature by act of June 8, 1912, made some provision for the establishing of boards of education in municipal school districts and the legislature of 1913, chapter 67, sections 2 and 3, covered practically the same ground. These sections appear in the 1915 Codification as sections 4868-4872 inclusive, but all were amended by the Laws of 1923, chapter 148, section 904. As our statutes now stand there is simply no provision for a first election or other means of organizing the first board in a municipal school district. Section 901 of chapter 148 of the Laws of 1923, as amended, 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."

Succeeding sections provide for a board of education, the membership qualifications and election, which is to be 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.

Section 817, to which reference is made in section 120-901 above quoted, provides that the existence or 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.

From such information as is contained in your letter and that of the county superintendent, 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. 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 and villages, including the territory annexed thereto for school purposes, become municipal schools and school districts only upon the certification of the State Superintendent of Public Instruction.

As above stated, I find no legislative authority for the holding of an election other than the regular elections provided for after a board has once been organized, which elections are to be held on the second Tuesday of February in each odd numbered year. See section 904. In view of the situation as above discussed, School District No. 2, Hidalgo County, is yet a rural district and the management has not passed from the County Board of Education and the board of directors nor will it pass until you certify, under the provisions of section 817, that there is a municipal school district.

As a means of bridging a gap not covered by legislation and of meeting the situation, it is suggested that you and the County superintendent, cooperating, delay such certification until the close of this school year and possibly until after the meeting of the next legislature, that by appropriate recommendation from your office the attention of the legislature be called to this situation possibly in the form of a prepared bill which would provide for a first board in a newly created municipal school district. By thus doing there will be no question as to the management and control so long as that district remains a rural district and if necessary legislation can be secured provision can be made for the election of a board of education for the municipal district so that no question need arise as to the legality of contracts and acts of such municipal board of education.