

Opinion No. 31-189

June 15, 1931

BY: Frank H. Patton, Asst. Attorney General

TO: Mrs. Georgia L. Lusk, Supt. of Public Instruction, Santa Fe, New Mexico.

{*80} Your letter of June 15th, enclosing copy of letter from Mr. Tom Newkirk, Chairman of the Folsom School Board at Folsom, New Mexico, has been received.

We understand, from Mr. Newkirk's letter, that the Folsom School has recently been converted into a municipal district; that before such change the local board hired teachers for the coming year; that their contracts were signed by members of the local board but not signed by the county board of education; that these teachers so hired were not wanted by the majority of the people and it is desired to know if the present municipal board can legally cancel these contracts and hire other teachers.

It is our opinion that the employment of teachers for rural schools is vested in the county board of education and it is provided that such county boards shall call upon the boards of school directors to nominate teachers and school employees and to submit recommendations as to budget requirements.

We have always construed this to mean that the final employment is vested in the county board of education and that such county board should be governed by the recommendations made by the local boards when deemed proper and for the best interests of the school.

Under Section 120-906, municipal boards are given the same powers and duties as are possessed by county boards of education, and in Section 120-104 county boards of education are empowered to employ and discharge all teachers.

Attention is also directed to Section 120-1105, which provides that no teacher is to be discharged without first having had a just hearing and right of appeal to the state board of education.

Of course, the question of contract and the right of the teacher necessarily enters into this question, but we do not care to discuss this end of the matter at this time, and it is our suggestion that, if the teachers now employed are for any reason not desirable, the present municipal board give such teachers a hearing and go into the question as to whether or not their employment in the first instance was legal. Unless the right to employ these teachers was delegated by the county board to the local board, there is a probability that their contracts carrying only the signatures of the local board were not valid.

{*81} The above, however, is in no way intended to control the future actions of the present board and is only given as a guide. Before any action is taken by the present board, it is suggested that the present authorities consult with their official advisor in that district, who is the district attorney, and be governed by his advice.