

## Opinion No. 31-327

December 11, 1931

**BY:** E. K. Neumann, Attorney General

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

{\*121} Your letter of December 11th, {\*122} 1931, makes the following query:

"Under New Mexico laws, can the board of Municipal Schools say that a child shall or shall not attend a certain school within the municipal district, or may it (the child) not attend any school within the district which the parents may select?"

Section 120-1201 of the 1929 Code in part is as follows:

"Pupils who are residents of a district shall be permitted to attend school in the same regardless of the time when they acquired such residence, whether before or after the enumeration."

This is the only provision we find in our New Mexico laws which makes any reference at all to the school attendance by children within a specific district. There is nothing in the statutory law which states the rights of children to attend any particular school in any particular district, except, of course, as following the above quotation, in the same section of the Code the provision that pupils of racial descent other than African may not attend schools which are provided for pupils of African descent.

The powers of the municipal boards of education are, as set forth in Section 10 of Chapter 119 of the Laws of 1931, the same as are possessed by county boards of education.

The power of municipal school boards would seem by reading Section 5 of Chapter 119 of the Laws of 1931, to be that they have control and supervision of all municipal schools within their respective districts and the sites, buildings, equipment and funds of said district, with the power to employ and discharge all teachers and all school employees of said schools. This gives to said board very broad general powers, and it would seem that they might within reasonable limitations prescribe the school to be attended by children within the municipal district.

The fact, that the municipal district has more than one school containing the same grades, would seem to indicate that it was necessary, because of a large population, to provide the additional school buildings to fill school needs and it would follow, apparently, that because of these needs it would be reasonable to assume that the board had power to prescribe the school which children in particular districts or residential districts should attend. It is reasonable to assume the board is better able than any other person or group of persons to determine the facilities at hand for the care

of the children in the various parts of the districts and to distribute the children in attendance to best utilize such facilities. Of course, this supervision and control can be exercised only within reasonable limitations and is not an arbitrary power upon the part of the board. They must take into consideration the location of the schools as compared to the location of the residence of the children concerned as well as other conditions and if these powers are reasonably exercised, I see no reason why it is not within the power of the municipal board to designate the school to be attended by the children of the district in such districts where more than one school is provided.