

Opinion No. 31-63

February 17, 1931

BY: E. K. Neumann, Attorney General

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

{*45} In your letter of February 16th, you request information as to your authority to revoke certificates and to remove teachers for incompetency.

By article 12 section 6, a State Board of Education was created to consist of seven members. The Superintendent of Public Instruction is ex-officio a member of that board.

By section 120-105 the powers of the State Board of Education before defining paragraph G of said section, gives the State Board of Education power to revoke teachers' {*46} certificates for incompetency, immorality, or for any cause which would have withheld its issuance in the first instance, and further provides, that action under this section shall only be taken after service of the accusation upon the accused person and hearing, or an opportunity to be heard shall have been given to the accused.

Section 120-1105 provides, that no Board of Education, County Superintendent, or Board of School Directors, or any member of such board, shall discharge a teacher without granting to such teacher full hearing and the right to appeal to the State Board of Education.

It would appear from these two sections, that the final decision in so far as the revocation of teachers' certificates and their discharge are concerned, rests with the State Board of Education

It is the opinion of this office that the only authority which you have in matters of this kind is simply that of a member of the State Board of Education, and you can only act with the other members of the board and that you have no powers in this connection as Superintendent of Public Instruction.

By Frank H. Patton,

Asst. Atty. General