

Opinion No. 37-1696

June 30, 1937

BY: FRANK H. PATTON, Attorney General,

TO: Dr. E. B. Godfrey State Director of Public Health State Department of Public Health Santa Fe, New Mexico

{*130} This will acknowledge receipt of your letter dated June 28th wherein you inquire whether the State Department of Public Health has authority to close school buildings because of the fact that they are not structurally safe.

{*131} Under Section 4, Chapter 39, Laws of 1937, the State Department, among other things, is given the following broad powers:

- "1. Supervise the health of the people of the state.
3. Inspect public buildings, institutions, premises and industries and to regulate the sanitation thereof in the interest of public health.
6. Close theaters, schools and all other public places and forbid gatherings of people when necessary for the protection of the public health.
7. Abate nuisances endangering the public health.
19. Establish, maintain and enforce such rules and regulations as may be necessary to carry out the intent of this act and to publish same."

If the structure of a school building is such as to impair the health of the school children because of poor ventilation, poor light, etc., clearly the department has authority to close the same. This, of course, deals strictly with matters of sanitation and public health. The difficulty arises where a school building may in all respects be conducive to good health and proper sanitation except that perhaps because of poor structure, the walls or roof might fall in, etc. I believe that in your request you refer to the latter case.

True, Chapter 39, supra, does not **expressly** authorize the State Department to close a public building merely because it may be structurally unsafe. However, here we are dealing with a public school occupied by children and it would seem absurd to strictly construe the act as meaning that the State Department can not close a school merely because the building is structurally unsafe, and so permit children to undergo the hazards of being either killed or crippled for life. In other words, it hardly seems possible that the legislature intended that all the State Department should do is to see that the children be physically sound when the walls of a dilapidated school fall on them.

Under subsection (7) above the State Department is given authority to abate nuisances endangering public health. Clearly, a school that is structurally unsafe is a nuisance and at least indirectly, I should think, endangers public health, at least you might have a health problem on your hands should the structure collapse.

Public health laws should be liberally construed.

"Construction of statutes. Statutes enacted for the purpose of preserving the public health should be liberally construed to carry out such purpose." 29 C. J. 243.

In view of the broad powers given by law to your department, it is my opinion that in the proper case the State Department has authority to close school buildings because of the fact that they are not structurally safe.

In conclusion I would suggest that should your department decide to close some school building, that every attempt be made to do so from some sanitation or public health viewpoint, such as bad ventilation or light, etc., or at least give those as some of your reasons for your action.

By FRED J. FEDERICI,

Asst. Atty. Gen.