

Opinion No. 39-3101

April 18, 1939

BY: FILO M. SEDILLO, Attorney General

TO: Most Reverend R. A. Gerken, Archbishop of Santa Fe, Santa Fe, New Mexico.

{*35} We have Your Excellency's letter of April 12 inquiring whether it is true that "Sisters who teach in the public schools cannot legally draw salaries for such teaching." We regret that the press of work in the office has made it impossible to reply earlier.

Whoever made the claim that Sisters who teach in the public schools cannot legally draw salaries for such teaching, has been grievously misinformed. Not only is religious liberty guaranteed by the Constitution of the United States, and by Article II, Section 11 of our own Constitution, but Section 9 of Article XII of the New Mexico Constitution, dealing with schools, specifically provides:

"No religious test shall ever be required as a condition of admission into the public schools or any educational institution of this state, either **as a teacher** or student * * *."

Therefore, there is nothing in the law and there can be nothing in the law prohibiting the payment of Sisters who are qualified and employed to teach in our public schools. Such a law would result in making their religious life or religious vows a test for their admission as teachers to our public schools contrary to the provision above quoted.

From Your Excellency's letter I gather that the Sisters in question have been employed and have rendered services as teachers. I know of only one statute which would deny any teacher the right to salary. That statute is Section 120-1103, 1929 Compilation, which reads as follows:

"Any person who teaches in the public schools without the required teachers' certificate shall forfeit all claim to compensation for services rendered."

By: A. M. FERNANDEZ,

Asst. Atty. Gen.