

**Opinion No. 44-4465**

February 25, 1944

**BY:** EDWARD P. CHASE, Attorney General

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

I have your letter of January 25, 1944, wherein you enclose an excerpt from the minutes of the meeting of the State Board of Education, held in August, 1943. You state that there has been some question about this matter, and that you would like to know if, in our opinion, the Board's action is legal.

Upon examining the minutes, it is noted that among other things, the State Board provides for the computation of the average daily attendance for the eight highest months during the session of 1943 and 1944 by all schools of the state.

Section 55-638 of the N.M. 1941 Compilation provides in part, as follows:

"Average daily attendance, as used herein, and for all school purposes, **shall be the total number of days which all pupils enrolled in any public school of any school district attended school for the entire school year, divided by the total number of days the school was in session for the entire school year.**

"In computing the average daily attendance in any school, school district or county, the following factors shall be used:

"(e) A school year shall constitute 180 teaching days, less not to exceed 5 regular holidays and 3 days for holding the 'Annual State Teachers' Convention.' Provided, however, nothing herein contained shall prevent any school teaching more than the minimum number of days required hereunder.

"(f) \* \* \* (This paragraph is not effective until after June 30, 1945.)

"On or before the 10th day of June of each year each superintendent shall also make an annual report to the state superintendent of public instruction of the average daily attendance of all schools under his supervision. **The yearly average daily attendance in any school district shall be obtained by dividing the total number of days all pupils of the school district attended by the number of days school was held in the district during the year, subject, however, to the provisions of subsections (e) and (f) above.** The annual average daily attendance in each county, determined as herein provided, shall be certified by the state superintendent of public instruction to the educational budget auditor on or before the first day of July of each year."

In view of the foregoing provisions of our law, it is clear that our statute specifies in detail the manner in which the average daily attendance shall be computed. There is no provision which gives the State Board of Education power to authorize the computation of the average daily attendance on the her child and join her husband in eight highest months during a school year, and accepting this average for the ninth month.

Hoping that the above fully answers your inquiry, I am

By HARRY L. BIGBEE,

Asst. Atty. General