

Opinion No. 44-4547

July 21, 1944

BY: C. C. McCULLOH, Attorney General

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

In your letter dated July 19, 1944, you state that a certain school superintendent of a municipal school has a contract which will run until the end of the 1945 term. However, the superintendent and the majority of the school board wish to enter into a new contract at this time for a term of three years, and you inquire whether the majority of the school board can enter into a new contract before the expiration of the old contract, in view of the fact that a new board member will assume office after the next school election in February, 1945.

In Section 55-907 of the 1941 Compilation a municipal school board is authorized to employ a superintendent. The law does not expressly authorize or prohibit a contract with the superintendent for any term greater than one year. If such a contract is entered into for a term of more than one year, it would be subject to budget limitation in each year. Otherwise I do not believe such a contract, if for a reasonable term, would be invalid.

In 56 Corpus Juris, Schools and School Districts, Section 325, page 396 it is stated "The rules of law relating to the performance and breach of contracts generally apply to contracts between the teachers and the school authorities." Contracts generally may be rescinded by mutual agreement, and if this is done by the superintendent and the present board, there is no reason why a new contract could not be entered into, although the new contract probably should recite that the existing contract has been mutually rescinded.

In Section 312 of the same volume of Corpus Juris above mentioned, we find this language:

"In the absence of a statutory provision limiting, either expressly or by implication, the time for which a contract for employment for a school-teacher may be made to a period within the contracting schoolboard's or officers' term of office, such board or officers may bind their successors in office by employing a teacher or superintendent for a period extending beyond their term of office, or for the term of school succeeding the term of office of the board, or of one of its members, provided such contract is made in good faith, without fraud or collusion, and for a reasonable period of time."

In view of this authority, I am of the opinion that the board and the superintendent can mutually rescind the existing contract and enter into a new contract for a period of three years.