

Opinion No. 44-4593

September 29, 1944

BY: C. C. McCULLOH, Attorney General

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

We have your letter of September 27, 1944 wherein you request an opinion concerning whether or not a county board of education can refuse to authorize the teaching of seventh and eighth grade courses which are a part of the elementary program when there is a demand by the students of a community for this work, and when the State Board of Education has requested the teaching of such grades.

Section 6 of Article 12 of the Constitution of the State of New Mexico provides in part as follows:

"A state board of education is hereby created, to consist of seven members. It shall have the control, management and direction of all public schools, under such regulations as may be provided by law. * * * The Legislature may provide for district or other school officers subordinate to said board."

Section 55-101 of the New Mexico 1941 Compilation provides:

"The State Board of Education, pursuant to Section 6, Article 12, State Constitution, shall have the governing authority of all public elementary and high schools of the state. * * * Said board shall determine educational policies of the state, and shall enact and publish by-laws for the administration of the public school system, which by-laws when enacted and published shall have the force of law. * * *"

Section 55-807 of the New Mexico 1941 Compilation provides:

"Except with respect to independent and union high school districts, the county board of education shall have supervision and control of all rural schools * * *."

In view of the foregoing, it is my opinion that under the Constitution and statutes of this State the State Board of Education has the power to prescribe the grades which shall be taught in the various rural schools, and that the county board of education is, under the last quoted sentence of the portion of the Constitution referred to, subordinate to the State Board of Education, and must exercise its supervision and control subject to the superior power of the State Board of Education.

Trusting that the above fully answers your questions, I remain

By HARRY L. BIGBEE,

Asst. Atty. General