

Opinion No. 44-4594

October 2, 1944

BY: C. C. McCULLOH, Attorney General

TO: Mr. R. H. Grissom, Educational Budget Auditor, Santa Fe, New Mexico

We have your letter of September 28, 1944 wherein you state that:

"When budgets are made we base our needs on the attendance of the previous year. After the budgets are made and school has started if, for any reason, the attendance should be less than we anticipated at the budget hearing and fewer teachers are needed would the law grant the board of education the privilege of employing the number of teachers first anticipated or should they employ the number which the average daily attendance justifies, after they are satisfied that that average daily attendance is not being lessened temporarily but that the condition is permanent and the attendance will continue about the same, and provided further that it would not in any way affect the contracts of the teachers but that they could be transferred to some other school."

Section 55-1107 of the N.M. 1941 Compilation provides that not more than one teacher shall be employed for each 20 pupils in average daily attendance in the high schools, and makes provision for special teachers in high schools, and that not more than one teacher for each 25 pupils in the grades and rural schools, and not more than one teacher in the grades and municipal schools for each 30 pupils.

Section 55-638 of the N.M. 1941 Compilation provides for the computation of average daily attendance on the attendance of the last school year, which is the basis which is used in making up the budgets for the various schools.

Section 55-1107 of the N.M. 1941 Compilation further provides that "the above numbers shall be computed upon the basis of average daily attendance." It is our opinion that the average daily attendance referred to in Section 55-1107 refers to the attendance during the school year, and not to the preceding year, as referred to in Section 55-638 and, therefore, if the attendance should permanently fall off, under the circumstances set forth in your letter, it would be proper and legal to reduce the number of teachers in such school.

To otherwise construe the statutes, it would be necessary to hold that even though there were actually no students in attendance during a current year, that it would be necessary to pay a teacher, or teachers, in connection with such school.

Hoping that the above fully answers your questions, I am

By HARRY L. BIGBEE,

Asst. Atty. General