

Opinion No. 45-4682

March 21, 1945

BY: C. C. McCULLOH, Attorney General

TO: Mr. Raymond Huff, Chairman State Board of Education Clayton, New Mexico

{*41} You have referred to Section 55-1107 of the 1941 Compilation, and to Section 55-1901 of the 1941 Compilation, and request an opinion relative to the question of which law governs in the case of high schools having less than 30 pupils.

The portion of Section 55-1107 which is pertinent to your question is as follows:

"* * * Provided, that in high schools established on or before March 13, 1923, and having less than 31, and more than 18, regularly enrolled high school pupils in average daily attendance, two (2) teachers may be employed. * * *"

The portion of Section 55-1901 which is pertinent to your question is as follows:

"* * * and whenever any high school, being the 9th to the 12th grades, inclusive, shall have less than 30 pupils in average daily attendance for the preceding school year, the pupils in such schools shall be transferred to the nearest schools having facilities to properly care for such pupils. Provided, however, whenever the State Board of Education shall determine that in any isolated case it is not economically feasible to transport such pupils and that no material saving can be made thereby, or that proper educational facilities are not available to properly care for such pupils, and shall so certify to the governing boards of education affected, such schools having less than the required number above provided shall be permitted to continue until such {*42} time as conditions may justify the transportation of said pupils to other schools as hereinabove provided."

Section 55-1901 covers the same subject matter as the above mentioned portion of Section 55-1107, and insofar as the latter section is in conflict with the earlier law, the later section would supersede the earlier law, and be controlling.

Under Section 55-1901, when the average daily attendance in high school falls below 30 pupils, such pupils shall be transported to the nearest school having facilities to properly care for them, unless the State Board of Education determines that it is not economically feasible to do so, or that proper educational facilities are not available in another school, in which case the school involved is authorized to be continued, and, when so continued, would be entitled to the teachers as provided in Section 55-1107.