

Opinion No. 45-4759

July 20, 1945

BY: C. C. McCULLOH, Attorney General

TO: Mr. J. D. Hannah State Auditor Santa Fe, New Mexico

{*109} We are in receipt of your letter of July 18, 1945 in which you call attention to the fact that by Section 10, Chapter 50 of the Laws of 1945, being the new teacher retirement law, it is provided that the payment of salary to the State Director of retirement and payment of actual expenses to members of the retirement board shall be made on warrants drawn by the State Superintendent of Public Instruction and State Educational Budget Auditor. You ask whether or not such procedure is lawful.

While it is unusual to have warrants for the payment of state funds drawn by anyone other than the State Auditor, I see no reason why the Legislature cannot legally make such provision. The Legislature has the power to make any provision it sees fit except where limited by the Constitution. The Constitution does not prescribe the duties of the State Auditor. The only provision of the Constitution which could have application is Article 4, Section 30 which provides in part as follows:

"Except interest or other payments on the public debt, money shall be paid out of the treasury only upon appropriations made by the Legislature. No money shall be paid therefrom except upon warrants drawn by the proper officer."

{*110} Since the Constitution does not prescribe any particular person as being the proper person to draw warrants, it is my opinion that the Legislature may constitutionally designate any official it sees fit to draw warrants. This being so, it is my opinion that Section 10 of Chapter 50 is constitutional.

It occurs to me that it might be possible if the officers involved deemed it advisable, to have you countersign the warrants so that an independent set of books would not have to be set up.

Trusting the foregoing sufficiently answers your inquiry, I am

By ROBERT W. WARD,

Asst. Atty. General