# STATE OF WASHINGTON. OFFICIAL OPINIONS RELATING TO QUESTIONS OF SCHOOL LAW. FEBRUARY, 1902. PART I

Published @ 2017 Trieste Publishing Pty Ltd

ISBN 9780649660674

State of Washington. Official Opinions Relating to Questions of School Law. February, 1902. Part I by Superintendent of Public Instruction



Edited by Trieste Publishing Pty Ltd.
Cover @ 2017



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SUPERINTENDENT OF PUBLIC INSTRUCTION

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STATE OF WASHINGTON.

# OFFICIAL OPINIONS

RELATING TO

# QUESTIONS OF SCHOOL LAW

BY THE

## ATTORNEY GENERAL

AND THE

## SUPERINTENDENT OF PUBLIC INSTRUCTION.

PART I

FEBRUARY, 1902.

OLYMPIA, WASH.:
GWIN HICKS, . . . STATE PRINTER.
1902.

# OPINIONS OF THE ATTORNEY GENERAL.

ATTORNEY GENERAL'S OFFICE,
OLYMPIA, January 30, 1901.

Hon. R. B. Bryan, Superintendent Public Instruction, Olympia, Wash.:

DEAR SIR — Your favor of a few days ago in the form of a letter from a certain school director stating that the residents of two or more school districts wish to unite for the purpose of establishing a union or graded school, under sections 9, 10 and 11, article 1, chapter 4, Code of Public Instruction, as amended by the Laws of 1899, but that one of the districts so wishing to unite is in a different county from the other. The question presents itself, Is such a union authorized by law?

It seems plain, from a reading of the entire Code of Public Instruction, that the only case in which contiguous territory lying in different counties may be placed in one district is in the formation of new districts called joint districts, under sections 16, 17 and 18, Code of Public Instruction. Section 10 provides that notification of the formation of the union districts shall be given to the county superintendent, presumably of the county comprising the new district, whose duty it shall be to designate such union district by number, as "Union District No. ——, ——— County," and to notify the county treasurer of the organization of such new district. The directors and clerk of the new district are required to file their oaths of office and certificates of election only in one county, and to file their signature with the treasurer of but one county, and to report to one county superintendent. The sections relating to the formation of union districts are entirely silent as to which county the apportionment of the state school funds shall be paid to. If it had been the intention to allow the formation of union districts in different counties, some one of the counties should have been designated to receive said apportionment.

The sections relating to districts for union or graded schools seem to contemplate the union only of districts in the same county, for they do not provide for conditions which would naturally arise from the union of districts in different counties.

I am of the opinion that the law does not authorize districts in different counties to unite for the purpose of establishing union or graded schools.

Very truly, W. B. STRATTON,
Attorney General.

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ATTORNEY GENERAL'S OFFICE,
OLYMPIA, February 6, 1901.

Hon. R. B. Bryan, Superintendent Public Instruction, Olympia, Wash.:

DEAR SIR — In answer to your inquiry of the 29th ult., in the form of a letter from a teacher in Pierce county in the following language: "There is a little boy in town who will be six years old in a week or two. His parents desire him to start to school. Are we compelled to accept him as soon as he is six?" I beg to say that under the Code of Public Instruction, section 64, page 384, Laws of 1897, every common school, not otherwise provided by law, shall be open to admission to all children between the ages of six and twenty-one years residing in the school district.

I assume that the child in question resides in the district in the common school of which he seeks admission. I also assume that the only reason upon which his exclusion is sought is the fact that he is not more than six years of age.

Under these circumstances it is my opinion that the child must be admitted as a pupil in the school. 21 American and English Ency. of Law, p. 763, and cases cited.

Section 43, page 245, Laws of 1897, provides that any board of directors shall have power to make such by-laws for their own government and the government of the common schools in their charge as they deem expedient, not inconsistent with the provisions of the Code of Public Instruction, the instructions of the Superintendent of Public Instruction, or the State Board of Education.

Under the above provision it is my opinion that the board of directors would have the authority to make a by-law refusing to

admit children six years of age at any other time than the commencement of a term, or perhaps the beginning of the year. If this is the condition of affairs in the school in Pierce county, then I am of the opinion that the child may be excluded, the regulation being a reasonable one and not in my opinion inconsistent with the law.

Very truly, W. B. STRATTON,
Attorney General.

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ATTORNEY GENERAL'S OFFICE,
OLYMPIA, March 1, 1901.

Hon. R. B. Bryan, Superintendent Public Instruction, Olympia, Wash.:

DEAR SIR—You submitted inquiries as follows:

"A teacher is employed in a village school, for a definite number of months, and signs a contract made in the usual form. It will be observed that the contract does not mention the subject of vacations.

"During the progress of the school a contagious disease makes its appearance in the village where the school is situated, and the school board orders the school closed for a week.

"Question: Must the teacher either lose this time or make it up, or is she entitled to her pay for the time the school was closed by order of the board? Would the existence of a single case, say of diphtheria, constitute good cause for closing the school?"

Accompanying the above is a copy of the printed form of the contract used in the case stated. This contract makes no provision for abatement of wages while school is closed by reason of epidemic or otherwise by order of the board of directors. Nor does it contain any provision that a teacher shall make up for lost time in such cases. But, by the contract, the teacher agrees to "teach, govern and control the public schools * * * for the term of ——— months, commencing on the ——— day of ——— for the sum of ——— dollars per month, to be paid at the end of each school month."

I assume as a fact that the teacher kept himself in readiness to resume work at the request of the board. The failure to teach was not the fault of the teacher, but was due to the act of the board.

They might have stipulated that the teacher should have no compensation for such time as the schools should be closed by

reason of the prevalence of a contagious disease in the village. In the absence of such a stipulation, the teacher's right to full compensation upon the agreement that he should be paid for the number of months named in the contract, is not defeated by the action of the board in closing the schools, because while the suspension was wise and prudent, the closing was not due to any acts which made it impossible for the school to be kept open.

I therefore advise that the teacher is entitled to his wages for the time during which the school was closed by order of the board, by reason of an epidemic.

The contract itself provides that the teacher shall be entitled to compensation except where he shall be legally dismissed from school, or have his certificate lawfully annulled.

Under section 43 of the School Code of 1897, "Any board of directors shall have the power to make such by-laws for their own government, and the government of the common schools in their charge as they deem expedient," etc.

Under this provision the board is vested with a wide discretion, and if in their judgment it is deemed expedient and necessary to close the schools by reason of a single case of diphtheria in the community, it is my opinion that they have the power to do so.

Very truly,

W. B. STRATTON,
Attorney General.

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ATTORNEY GENERAL'S OFFICE,
OLYMPIA, March 22, 1902.

Hon. R. B. Bryan, Superintendent Public Instruction, Olympia, Wash.:

DEAR SIR — In answer to the letter of C. M. McBride, of Pasco, of some weeks ago, with reference to the division of funds held by districts 3 and 4, for the benefit of the new district No. 5, I beg to say that I take it that he refers, in his letter, to the credits of districts 3 and 4 at the time the petition was granted to establish a new district.

The law simply provides that a just share of the school moneys shall be given to the new district. It seems to me that the more equitable rule to adopt would be to make the basis of this division upon the number of school children in the new dis-

trict at the time it was formed, rather than upon the basis of the school children in the new district at the time the division was made. The statute seems to contemplate that a division shall be made at the time of the formation of the new district.

Very truly, W. B. STRATTON,
Attorney General.

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ATTORNEY GENERAL'S OFFICE,
OLYMPIA, May 18, 1901.

Hon. R. B. Bryan, Superintendent Public Instruction, Olympia, Wash.:

DEAR SIR—I am in receipt of your favor of the 15th inst., wherein you state, in substance, that owing to a possible lack of harmony among the provisions of law, the custom has grown up in your office of changing the basis of apportionment every time a new school district is organized and has had one month's school after the annual reports of the various county superintendents have been made and filed in your office. Such apportionment being made upon a written statement made by the county superintendent at any time during the year to the effect that a new district has been organized and has had one month's school; and you say that the Superintendent of Public Instruction has made it a practice to include such new district in his next and all subsequent apportionments; and, that it seems to you that this act is in violation of the provisions of law relative to apportionment.

You further say that it has been the custom of your office, upon the receipt of a letter or written statement from a county superintendent at any time of the year, to the effect that a union school has been established and has had one month's school of a grade or grades higher than the grammar grade, or that a new grade has been added to any union high school and has been maintained one month, to apportion to such union or graded school the bonus of $100 provided for by section 10 of the school law, and being in serious doubt as to the legality of the practice, you have propounded to this office for opinion the following questions:

"First: Has the Superintendent of Public Instruction of this state a legal right to deviate from the express provisions of the ninth subdi-

vision of section 22 of the Code of Public Instruction above quoted, and upon the written statement of a county superintendent to the effect that a new district has been organized and has maintained one month's school subsequent to the making of his last annual report, apportion funds to such new district the same as to other districts?

"Second: Has the said Superintendent of Public Instruction the right, upon the written statement of a county superintendent to the effect that a union district has been formed subsequent to his last annual report, and has maintained one month's school, to apportion to said union high school district one hundred dollars ($100) for each grade above the grammar grades?"

In reply I beg leave to say, I have examined the law as carefully and fully as I am able to at this time. and from such examination I am satisfied that the practice of your office as indicated above is very irregular if not illegal. In my examination of the law I have used your recent compilation of 1901, which is not yet indexed, and the references and citations hereinafter made will be to that compilation.

Subdivision 10 of section 33, relating to the duties of the county superintendents, requires such superintendents to make an annual report to the Superintendent of Public Instruction on the first day of August of each year, for the school year ending June 30th next preceding. Said report to contain an abstract of the reports made to him by the district clerks, and such other matters as the Superintendent of Public Instruction shall direct. Subdivision 9 of section 22, relating to apportionments to be made by the Superintendent of Public Instruction, provides that the basis of such apportionment shall be "the last annual reports of the several county superintendents on file in your office at the time of making your apportionment."

The law seems to require the county superintendent to make a full and complete annual report, and it is clear that this annual report is the only proper basis of apportionment of public moneys by the Superintendent of Public Instruction, and for that reason such report should contain all of the information relating to the schools of the county that is necessary to enable the Superintendent to make his apportionment during the following year.

Section 70 provides, that all school districts in this state shall maintain school during at least three months each year, and that all graded school districts in incorporated cities and towns shall maintain school during at least six months each year;