

**OPINION
68-57**

May 24, 1968 (OPINION)

Mr. Dale H. Jensen

State's Attorney

Burleigh County

RE: Counties - Superintendent of Schools - Parochial Schools

This is in reply to your letter of May 22, 1968, relative to the appointment of a deputy county superintendent of schools. You state the following facts and questions:

Under section 15-22-06 of the North Dakota Century Code, it provides, where there are 50 or more teachers under the supervision of the county superintendent of schools, a deputy may be appointed.

It appears that at this time in Burleigh County, the superintendent of schools has over 40 teachers under her supervision in the public schools, and over 50 if the parochial teachers are included.

Under 15-34-03 of the Code, in the supplement, it is noted, under subsection 1, that it is necessary for the county Superintendent of Schools to approve a parochial school.

Please give me your opinion as to whether or not the parochial teachers are included in the count of teachers, for purposes of the appointment of a deputy."

As you have noted, section 15-22-06 of the North Dakota Century Code provides as follows:

15-22-06. DEPUTIES - APPOINTMENT - SALARY. In counties in which fifty or more teachers are under his supervision, the county superintendent of schools may appoint an office deputy for whose acts as such deputy he shall be responsible. The salary of the deputy shall be fixed by the board of county commissioners. In counties in which sixty or more teachers are under the supervision of the county superintendent, he shall be allowed one field deputy and an additional field deputy for each additional one hundred teachers or major fraction thereof under his supervision. The field deputies shall assist the county superintendent in visiting schools and in the general supervision of the educational work of the county. They shall possess the educational qualifications required of the county superintendent and shall receive a salary equal to eighty percent of the county superintendent's salary. In counties where the county court has increased jurisdiction and where the county has a population exceeding forty thousand, the number and salary of deputies, clerks, and assistants for the county superintendent of schools shall be fixed from time to time by

resolution of the board of county commissioner according to the volume of business of the office."

We believe this section, relative to the teachers under the supervision of the county superintendent of schools, refers to section 15-22-09 of the North Dakota Century Code which provides:

DUTIES IN GENERAL. The county superintendent of schools shall have the general superintendence of the schools in the county except those in districts which employ a city superintendent of schools."

Section 15-22-09 does not refer to the teachers but rather to the schools. This office on April 5, 1947, issued an opinion to Miss Margaret Gillen, Burleigh County Superintendent of Schools, in which we held that due to the provisions of section 15-22-09, teachers under a city superintendent of schools were not under the supervision of the county superintendent. In that opinion it was stated as follows:

However, the county superintendent exercises no supervision over the teachers in the city schools. He is not required nor is it his duty to supervise work or to give them directions and instructions as to their methods of teaching."

A copy of the opinion is enclosed for your consideration.

Section 15-34-03(1) of the North Dakota Century Code is the compulsory school attendance law. It provides that a child is excused from attending the public schools of a district when "the child is in attendance for the same length of time at a parochial or private school approved by the county superintendent of schools." We do not believe that under this statute we can state the county superintendent exercises supervision over the teachers in the parochial schools nor is that officer required nor is it his duty to supervise work or give such teachers directions and instructions as to their methods of teaching. While the county superintendent has the obligation to approve or disapprove such schools, insofar as the compulsory attendance law is concerned, we cannot state that the teachers in such school are under the supervision of the county superintendent of schools with respect to the provisions of section 15-22-06.

It is therefore our opinion that parochial teachers are not included in the count of teachers for the purposes of the appointment of a deputy under the provisions of section 15-22-06 of the North Dakota Century Code.

HELGI JOHANNESON

Attorney General