

OPINION
55-29

December 19, 1955 (OPINION)

COMMON SCHOOL DISTRICTS

RE: Compensation of Clerks

This office acknowledges receipt of your request of December 14, 1955, asking for an opinion relative to the application of Chapter 138 of the 1955 Session Laws dealing with the compensation of clerks in common school districts. The question on which you want a ruling is based on the following situation: You have in your county on the Indian reservation a common school district which is not operating because the the government has a school, but the school board of this common school district is assisting the federal government by supplying one or more teachers, and your question is whether the clerk of said district is limited to twenty dollars annual compensation or whether the board has the discretionary power to pay not in excess of one hundred dollars.

The intention of the Legislature is not at all clear. It is difficult to ascertain just what is intended when it drafted this particular section, but we have no right to speculate as to what its intention might have been so long as we can put a literal reading of the law to a reasonable understanding. There will be noted in the law the following wording: "His annual compensation shall be fixed by the board in an amount of not less than twenty dollars nor more than twenty dollars if there is no school in operation, and not to exceed one hundred dollars for one school or teacher employed, * * *". The use of the conjunction "or" rather than "and" must be considered to be intentional and be it such, the school district in which you are interested would have the right to pay the clerk of this district an amount not to exceed one hundred dollars because they are actually having one teacher employed. It is, therefore, our opinion that under the law as it is read, it must be construed to authorize the school board to pay not in excess of one hundred dollars if a teacher is employed, even though there is no actual school in operation.

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Attorney General