

Opinion No. 46-4953

September 18, 1946

BY: C. C. McCULLOH, Attorney General

TO: Mr. Murray C. Hintz State Director Department of Public Welfare Santa Fe, New Mexico

{*274} Replying to your request for an opinion submitted on the following statement of facts:

The New Mexico Department of Public Welfare, under its authority and powers, (Sec. 73-101 -- 73-124, 73-126 -- 73-133 N.M.S.A. 1941 Compilation, and amendments thereto) has agreed to cooperate with the U.S. Department of Agriculture, Section 1 of the Agreement being as follows:

"1. In order to effectuate the purposes of the National School Lunch Act (Public Law 396, 79th Congress, approved June 4, 1946), hereinafter referred to as 'The Act', this agreement, made and entered into this 5th day of August, 1946, by and between the United States Department of Agriculture, hereinafter referred to as 'The Department', and **the Public Welfare Department** of the State of New Mexico, hereinafter referred to as 'State Agency';"

{*275} Question 1. May the "State Agency" enter into an agreement with non-profit organizations, such as parent teachers association, and service clubs, as sponsors of school lunches, and make monetary reimbursement directly to the authorized officer of the non-profit organization for moneys expended in the operation of a particular school lunch program? or

Question 2. Will it be necessary for the "State Agency" to enter into an agreement with the local school authorities and make reimbursement directly to or under the supervision of such authorities?

OPINION -- Question 1.

Art. 4, Sec. 31, Art. 12, Sec. 3 of the Constitution of New Mexico, and Sec. 1, Sec. 9 and Sec. 29 (e) of the Uniform School Lunch Agreement with the "State Agency" of New Mexico prohibit any reimbursement or direct control to such non-profit service clubs or associations.

However, it is my opinion the local school authorities may appoint a non-profit organization, such as a Parent-Teachers' Association, or a non-profit Service Club, to function as an agency under the written consent and control of the local school authorities, receive payments and donations, disburse said payments and donations for

and on behalf of said school authorities in carrying out the objects of the National School Lunch Program.

OPINION -- Question 2.

An agreement between the local school authorities and the "State Agency" is necessary in order to carry out the agreement with "The Department" (U. S. Department of Agriculture).

"9. The State Agency will enter into a standard form of agreement, approved by the Department, with participating schools, covering the operation of the lunch program in such schools, which agreement shall contain as a minimum all the conditions prescribed in paragraph 16 hereof. The "State Agency" will make no reimbursement in connection with either food or non-food assistance to any school in the absence of such agreement therewith, nor make such agreement retroactive in effect. (And other related paragraphs)."

By THOS. C. McCARTY,

Asst. Atty. General