

Opinion No. 46-4952

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 on the following question:

Do the provisions of the Constitution of the State of New Mexico prohibit the State Department of Public Welfare from making monetary payments of state funds to non-profit private or sectarian schools?

The payments contemplated would be for reimbursement for the operation of hot school lunches, and would involve federal moneys as well as state funds.

The constitutional provisions relating to this question are as follows: Art. 4, Sec. 31; Art. 9, Sec. 14; Art. 12, Sec. 3.

It is my opinion that the Constitution prohibits the payment of state funds for the above purpose to private or sectarian schools.

It may be noted that the act of Congress, (Public Laws 396, 79th Congress, 2nd session) is non-discriminatory, providing that non-profit, private and sectarian schools may participate independently of state schools and receive the same contribution from the Department of Agriculture as state schools:

"If the State Educational Agency is not permitted by law to disburse the funds under this act to non-profit private schools in the state, the Secretary of Agriculture shall disburse funds directly to the non-profit schools."

By THOS. C. McCARTY,

Asst. Atty. General