

Opinion No. 47-5020

May 8, 1947

BY: C. C. McCULLOH, Attorney General

TO: R. H. Grissom Educational Budget Auditor Santa Fe, New Mexico

{*43} This is in response to your letter of May 7, 1947, in which you request the opinion of this office as to whether a municipal board of education may legally place on its list of salaried teachers two sectarian teachers who devote their full time to teaching classes at a sectarian or parochial school.

Section 3, Article 12 of the New Mexico Constitution provides that:

"The schools, colleges, universities and other educational institutions provided for by this constitution shall forever remain under the exclusive control of the state, **and no part of the proceeds arising from the sale or disposal of any lands granted to the state by congress, or any other funds appropriated, levied or collected for educational purposes, shall be used for the support of any sectarian, denominational or private school, college or university.**"

Section 31, Article 4 of the New Mexico Constitution provides that:

"No appropriation shall be made for charitable, educational or other benevolent purposes to any person, corporation, association, institution or community, not under the absolute control of the state, but the legislature may, in its discretion, make appropriations for the charitable institutions and hospitals, for the maintenance of which annual appropriations were made by the legislative assembly of nineteen hundred and nine."

Section 14, Article 9 of the New Mexico Constitution provides that:

"Neither the state, nor any county, school district, or municipality, except as otherwise provided in this constitution, shall directly or indirectly lend or pledge its credit, or make any donation to or in aid of any person, association or public or private corporation, or in aid of any private enterprise for the construction of any railroad; provided, nothing herein shall be construed to prohibit the state or any county or municipality from making provision for the care and maintenance of sick and indigent persons."

The general rule supported by the {*44} decided cases is that under constitutional restrictions such as ours that neither the legislature nor any county, city or other public corporation can make any appropriation or pay from any public fund, anything in aid of any church or sectarian purpose, or to help support or sustain any institution controlled by any church or sectarian denomination whatever. (42 Am. Jur. p. 767, Sec. 66).

Also according to the great weight of authority, a contract between a state, county, city or other political subdivision and a sectarian institution, whereby the former agrees to pay the latter for services rendered, or expenses incurred thereunder, is within the meaning of a constitutional provision prohibiting the use of public funds in aid or support of sectarian institutions and void. (42 Am. Jr. p. 767, Sec. 66; 5 A.L.R. 879; 22 A.L.R. 1319; 55 A.L.R. 320; 141 A.L.R. 1148)

I have also considered the case of *Everson v. Board of Education*, 91 L. Ed. 472, decided by the Supreme Court of the United States on February 10, 1947, relating to transportation of children to parochial schools; however, in my opinion, that decision does not deviate from the general rule set out above to an extent that the same court would uphold paying of salaries to sectarian teachers who devoted their full time teaching in a sectarian or parochial school.

In view of our constitutional provisions which limit the purposes for which public funds may be spent, and in view of the construction placed upon similar constitutional provisions throughout the courts of the United States, we are of the opinion that a municipal board of education is without legal authority to place on its list of salaried teachers, two sectarian teachers who devote their full time to teaching classes at a sectarian or parochial school.