

Opinion No. 47-5042

June 20, 1947

BY: C. C. McCULLOH, Attorney General

TO: Mr. C. R. Sebastian, State Comptroller, Santa Fe, New Mexico

{*61} We wish to acknowledge receipt of your letter of transmittal of several days ago wherein you forwarded to this office an inquiry from the Educational Budget Auditor relative to S. B. 147, wherein an interpretation of said law was requested as to the following questions:

{*62} 1. Who will be the board of education, the board of the institution as appointed by the Governor, the county board of education, or an elected board of education? In case of an elected board of education, who would elect it?

2. Who will be the treasurer of such a board, the county treasurer, state treasurer or own institutional treasurer? Who will draw the warrants?

3. In view of the power of the superintendent of the institution to prescribe courses of study, should inmates who do not necessarily take academic work but whose work is prescribed by the superintendent be included in average daily attendance in the distribution of the Equalization Fund? In other words, does the ADA in this case mean inmate population or average daily school attendance?

4. When the budgets were made for these two institutions, money was allowed for teachers' salaries only. If any money is not used for teachers' salaries during the year, can it be used for other purposes, or must the institution sacrifice this money? Would any balance remaining revert to the General County Maintenance Fund?

I shall endeavor to answer the aforementioned questions in consecutive order.

In response to your first question, there will be no board of education, strictly speaking, but the boards of each institution under present law are given broad powers in the management and control of same, including matters pertaining to the education of inmates.

It therefore follows there won't be any treasurer of the board of education at these two institutions as there is no board of education; but that, more than likely, the secretary-treasurer of said institutions will draw the warrants, unless the board of trustees should see fit to designate the superintendent, or some other person, to draw them.

Sec. 5-101 of the New Mexico 1941 Compilation gives the trustees of the New Mexico Industrial School control over the disbursement and expenditure of all moneys appropriated to it by the State of New Mexico, but, in view of the fact that provision is

made in the same section requiring the Secretary-Treasurer to give bond in the sum of \$ 10,000, the board probably would not designate anyone else to draw the warrants unless extraordinary circumstances arise.

In answer to your third question, I desire to set forth a part of said S. B. 147 which reads as follows:

"For the purpose of computing average daily attendance, it shall not be necessary that any of the courses of study be subjects prescribed by the State Board of Education, but the courses of study shall be prescribed by the superintendent of the school."

It is therefore apparent that any inmate who receives any sort of instruction prescribed by the superintendent, would be entitled to be counted in determining the ADA of that institution, and, as a practical matter, would probably mean the inclusion of the entire inmate population in the computation of the ADA.

As you know, under S. B. 147 the New Mexico Industrial School and Girls' Welfare Home are treated as school districts and are entitled to participate in the "State Public School Equalization Fund", as if they were in fact school districts.

However, the aforementioned institutions shall participate in the equalization funds of the respective counties where located, calculated on the basis of average daily attendance as weighed according to {*63} Section 55-636 of the 1941 Compilation and not in accordance to the proportion the approved maintenance budget of said institution bears to the total approved maintenance budget of all school administrative units in that county.

If any money derived from the equalization fund is not used for maintenance purposes during the year, said surplus would remain to the credit of the institution in the office of the County Treasurer, and could be used in making the next year's budget, just like a surplus in the Equalization Fund could be applied in the making of a budget for any other school district.

The monies secured from the Equalization Fund by these two institutions must be used for school maintenance purposes, as Section 55-636 of the 1941 Compilation limits the use of said funds to such purpose It follows that any surplus or balance remaining at the end of any fiscal year would not revert to the General County Maintenance Fund.

By ROBT. V. WOLLARD,

Asst. Atty. General