

Opinion No. 49-5235

August 2, 1949

BY: JOE L. MARTINEZ, Attorney General

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

{*71} I have your letter of August 1, 1949, asking the opinion of this office as to whether or not § 55-629 of the 1941 Compilation, Pocket Supplement, permits the transfer of moneys to the direct charge fund from the maintenance fund, to be used for payment of rental for school buildings.

§ 55-629 provides as follows:

"Any municipal or rural school district, which is unable to raise sufficient funds to meet its approved direct charge account budget, **including necessary items for buildings**, equipment, and repairs, by levying the maximum tax allowed by law, may use an amount not to exceed 5% of its total maintenance budget for the purpose of meeting such direct charge account budget, provided the monies credited to the maintenance fund of such districts are sufficient to meet the maintenance budget of such school district and provided further that the use of said maintenance fund to meet such direct charge budget is agreed by all the governing boards of education in the county and by the county budget commissioners and the educational budget auditor and the state board of education.

Any municipal or rural school district which has a balance to its credit in the maintenance fund for the preceding year, and which is unable to raise sufficient funds to meet its approved direct charge budget, **including items for buildings**, equipment, and repairs, by levying the maximum tax allowed by law, may, with the approval of the county budget commissioners and the educational budget auditor, have transferred to its direct charge account for the purpose of meeting said budget out of said balance an amount not to exceed 5% of its total maintenance budget." (My Emphasis).

The answer to the question presented is dependent upon the interpretation to be given to the phrase "necessary items for buildings" in the above quoted section.

It should be noticed that the use is not limited to the erection of buildings, nor is it limited to items necessary for existing structures. Its purpose is to secure adequate facilities for any given school district whose direct charge fund is insufficient for that purpose. I feel that rental under this section constitutes a necessary item for buildings where facilities are not owned by the school district, and it is, therefore, my opinion that a transfer may be made to the direct charge fund from the maintenance fund for that purpose.