

Opinion No. 49-5249

September 20, 1949

BY: JOE L. MARTINEZ, Attorney General

TO: R. H. Grissom Educational Budget Auditor Office of State Comptroller Santa Fe, New Mexico

{*89} Receipt is acknowledged of your letter dated August 31, 1949, together with letters addressed to you from the Santa Fe County Board of Education, Chairman and Treasurer of the County Board of Commissioners of Santa Fe County.

An examination of the material forwarded to me reveals that the County Board of Commissioners, Santa Fe County, because of the depletion of county funds, wish to borrow the sum of \$ 29,950 from the School Maintenance Fund, with the promise that the money will be repaid not later than December 31, 1949. Your question as contained in your letter is:

"Would it be legal for me to authorize a transfer from the school maintenance fund to the county fund as a loan to said county?"

Section 55-603 of the 1947 Pocket Supplement to the 1941 New Mexico Statutes Annotated, authorizes and provides for a maintenance budget wherein it is expressly provided that "all school maintenance budgets shall **be made in conformity with and limited to the following:**". The various items are then listed under the maintenance budget for which expenditures are authorized. No authority is found for the lending of money in this budget as it is set forth in the statute.

Under § 55-629, 1947 Pocket Supplement to 1941 Compilation, New Mexico Statutes Annotated, authority is granted to transfer {*90} not to exceed 5% from the maintenance account to the Direct Charge Account under certain conditions and provisions for transfers within any budget under certain conditions are authorized under § 55-614, supra, the above of course referring to school budgets.

The above statutes contain the only authority for the transfer of school funds and limits such transfer from one school budget to another.

The School Board has no authority to make loans or investments from the funds in the absence of express statutory authority, and no such authority if given in the statutes.

Under date of September 25, 1943 an opinion was given by this office. See Attorney General Opinion No. 4384, which is in point. The Taos County Board of Education made inquiry as to whether or not a county school board may buy war bonds with unexpended balances in some of their funds. The Attorney General held "* * *" that all items going into the various county school funds are strictly budgeted and that the items

so budgeted may be expended only for the purposes set forth therein (Sec. 55-614, 1941 Compilation)" and further, "it is my opinion that the County Board of Education has no authority to invest any funds whatever".

In view of the above, it is my opinion that you have no authority to authorize the transfer by means of a loan of \$ 29,950 from the School Maintenance Fund to the County Commissioners of Santa Fe County. The papers forwarded by you are returned herewith.