

Opinion No. 51-5365

May 8, 1951

BY: JOE L. MARTINEZ, Attorney General

TO: Mr. Floyd Santistevan Assistant, State Superintendent of Public Instruction Santa Fe, New Mexico

{*44} This is in reply to your request for an opinion of this office defining the term "State Educational Agency", as set out under Title I, Public Law 815, Second Section 81st Congress, approved September 23, 1950.

The basic control over public education in the State of New Mexico is set up under Section 6 of Article 12 of the Constitution of the State of New Mexico, which provides as follows:

"A State board of education is hereby created, to consist of seven members. It shall have the control, management and direction of all public schools, under such regulations as may be provided by law. The Governor, and the State Superintendent of Public Instruction shall be ex-officio members of said board and the remaining five members shall be appointed by the Governor, by and with the consent of the senate; and shall include the head of some state educational institution, a County Superintendent of Schools, and one other person actually connected with educational work. The legislature may provide for district or other school officers, subordinate to said board".

Pursuant to the authority vested in the legislature under the above quoted constitutional provision, the State Board of Education was given certain basic responsibilities and powers, as shown by Section 55-101 of the 1941 Compilation. This section insofar as is material provides as follows:

"The State Board of Education pursuant to Section 6, Article 12, State Constitution, shall be the governing authority of all public elementary and high schools of the state and shall cause the provisions of this chapter to be carried into effect to the end that the school laws of the state shall be properly and uniformly enforced. Said board shall determine educational policies of the state, and shall enact and publish by-laws for the administration of the public school system, which by-laws when enacted and published shall have the force of laws".

In addition to the foregoing other broad powers have been granted to the State Board of Education by virtue of Section 55-105 of the 1941 Compilation. (A copy of which is appended hereto for your information).

A consideration of the provisions of the Constitution and of the statutes above quoted shows definitely that the basic responsibility for the supervision of public elementary and

secondary schools in New Mexico lies with the State Board of Education. Although the State Superintendent of Public Instruction is given general supervision over public instruction by Section 55-201 of the 1941 Compilation, this general supervision is specifically made subject to the supervision of the State Board of Education.

In passing, it might be mentioned that the State Superintendent of Public Instruction is by law made the Secretary of the State Board of Education. (see Section 55-103 of the 1941 Compilation). The State Board of Education purely has the authority to receive the monies whose allocation is proposed by the above cited federal law. In this connection, Section 55-107 (c) provides:

"To accept and receive all grants of money from the United States of America or any other agency, made for public school purposes or in any way touching or pertaining to {*45} the public school system of the state, and to disburse the same in the manner and for the purpose specified in the grant. No private agency of whatever nature shall introduce, conduct, sponsor or in anywise carry on, or cause to be carried on, any kind of educational program in or for the benefit of the public schools of this state or any of them, without having first obtained the approval of such program by the state board of education or the state superintendent of public instruction".

It is, therefore, the opinion of this office that the State Board of Education is the agency primarily responsible for the state supervision of public elementary and secondary schools and is the state educational agency responsible for carrying out the purposes of Section 101 of said public law 815 as the same applies to the State of New Mexico.