

Opinion No. 52-5536

April 28, 1952

BY: JOE L. MARTINEZ, Attorney General

TO: Mr. Tom Wiley Superintendent of Public Instruction State Department of Education
Santa Fe, New Mexico

{*247} Recently you requested a review by this office of the status of the New Mexico High School Athletic Association so far as control of the same by New Mexico high schools is concerned.

You mentioned that recent opinions of this office indicated that the association is an organization outside of the control of its member schools and you posed the specific inquiry: "Is, or is not the New Mexico High School Athletic Association under the control of the high schools of New Mexico?"

On February 15th, 1952, this office stated in an opinion that the New Mexico High School Athletic Association is a non-profit association and is independent financially, legally and otherwise from the state educational system. The opinion further stated that action by the association could in no way be deemed to be an action by a state agency, institution or in any way a function of our state educational system.

In a further opinion dated February 21, 1952, this office ruled that even though membership dues were received in part from public schools, that fact did not require any activity carried on by the association to be carried on as a public or charitable enterprise, and the ruling reiterated the former declaration that the association is independent from our state educational system.

At the time of our ruling, the information supplied this office by those who sought the opinion was to the effect that the New Mexico High School Athletic Association was an autonomous, non-profit association possessing a constitution of its own, and carrying on its activities in conformity with the constitution which had been adopted by the association alone. In the light of that information there could have been no other ruling than the ruling which was given in the former opinion.

It now appears, in the light of information which you have furnished to this office -- namely the constitution and by-laws of the association which were not available to this office heretofore -- that the information given us previously that the association is autonomous and possesses its own constitution is erroneous.

Article III of the association's constitution reads as follows:

"This association shall consist of all the high schools in the State of New Mexico that adopt this constitution and pay the dues."

It follows, therefore, that the constitution of the association is not adopted by the association but by the participating high schools.

The constitution indicates that the high schools are to be represented at meetings of the association by representatives of the high {248} schools. The provision governing meetings provides that representatives of eight high schools shall constitute a quorum for the transaction of business. These features are concrete evidence of the fact that the high schools constitute the association and that the association is part and parcel of the high schools of the State of New Mexico.

It is further to be noted that Article VIII dealing with amendments reads as follows:

"All amendments to the constitution and by-laws shall be proposed by the Board of control (Provided for within the constitution for the administration of business by the association) or twenty-five percent of member schools, subject to ratification by the association by a referendum vote. All sections of the constitution and by-laws conflicting with this amendment shall be changed to coincide."

This is further evidence of the fact that the association is an integral branch of the high school system within the State of New Mexico.

In reviewing the constitution of the association the conclusion seems to be inescapable that the association is in reality a committee of the high schools delegated by the entire number of high schools participating in athletics to integrate an athletic program to be followed by the high schools. As such, even though officers are provided for within the constitution, the association nevertheless continues to retain the characteristics of being a committee or a delegated agency of the high schools.

It is to be further noted in reviewing the constitution that some of the provisions therein are ambiguous or overlapping. It is the suggestion of this office that the constitution in its entirety be reviewed in order that these uncertain features may be eliminated.

In the light of the foregoing any former opinions issued by this office to the effect that the New Mexico High School Athletic Association is independent of the control of the New Mexico high schools are expressly overruled. It is the categorical pronouncement of this office that the New Mexico High School Athletic Association, by virtue of the fact that it owes its existence to the New Mexico high schools and enjoys its sole powers under a constitution adopted by the New Mexico high schools, is wholly under the control of the high schools of New Mexico composing its membership.

This opinion is in no wise to be construed as any expression upon the right of the association through the high schools to charge fees for broadcasting athletic events or for admission. This is something to be determined by the high schools and by the association.

I trust this gives you the information you desire.