

Opinion No. 52-5530

April 10, 1952

BY: JOE L. MARTINEZ, Attorney General

TO: Honorable Tom Wiley Superintendent of Public Instruction Santa Fe, New Mexico

{*240} This is in reply to your letter of April 8, 1952, in which you request {*241} an opinion from this office as to whether or not it is legal for local school administrative units to accept federal aid for school building construction under Public Law 815, 81st Congress, without such funds being channeled through your office in Santa Fe. By "local school administrative units," I understand you to mean such bodies as county boards of education, municipal boards of education and independent school districts.

In Public Law 815 we find in Sec. 201 this declaration of policy:

"In recognition of the impact which certain Federal activities have had on the school construction needs in the area in which such Federal activities have been or are being carried on, the Congress hereby declares it to be the policy of the United States to bear the cost of constructing school facilities in such areas in the manner and to the extent provided in this title."

There then follow the other portions of the act which provide for direct payment of these federal funds to "local educational agencies."

I understand that the first step taken by a local school board to procure these federal funds is to present an application therefor to the Department of Education. Your office screens such applications and forwards them with recommendations to the United States Department of Education. The federal government then pays the funds directly to the local school board.

The pertinent New Mexico law dealing with federal aid to education is Ch. 162, Laws of 1939 (§§ 55-518 to 55-524, inclusive, NMSA). A reading of this enactment indicates that what was contemplated was a payment of the federal funds directly to the state for management and disbursement to the local administrative units. (See §§ 55-519 to 55-521, inclusive). It is likewise clear that the Legislature anticipated that in most cases a disbursement of federal funds would be made to the schools on a state-wide basis. Obviously, any disbursement under P. L. 815 will be much more limited in scope. There is, however, no prohibition in our statutes or Constitution against a disbursement from the federal government directly to a local school administrative unit as is contemplated in Public Law 815.

Furthermore, the declared policy of our own Legislature in enacting Ch. 162, Laws of 1939, must be considered. In Sec 55-518 we read this language:

"The state of New Mexico does hereby accept the provisions of each and every part of each and every title of any act of the Congress of the United States which will afford or grant to accepting states federal aid to education, educational institutions or educational activities within the state; Provided, however, that any such act of Congress shall reserve to the State and its local subdivisions the administration of schools."

The purport of this language is obvious and the proviso is in line with the constitutional mandates of Art. 12, Sec. 3 and Art. 12, Sec. 6. In my opinion moreover, there is nothing in Public Law 815 which seeks to divest the State of New Mexico of its control over the public schools. In addition, the fact that application for federal funds under Public Law 815 are processed through the office of the Superintendent of Public Instruction indicates further that the state is not surrendering its control over the public schools.

It is therefore my opinion that the local administrative units of the public school system of New Mexico may legally accept federal aid for school building construction under Public Law 815, 81st Congress.

I trust that this opinion has answered fully your questions on this subject.