

## Opinion No. 53-5882

December 30, 1953

**BY:** RICHARD H. ROBINSON, Attorney General

**TO:** O. J. Holder Educational Budget Auditor P. O. Box 668 Santa Fe, New Mexico

{\*314} This will acknowledge receipt of your letter of December 19, 1953 in which you request our opinion as to whether or not it is legal to loan school Maintenance money to the same school district's Direct Charge Fund for the purpose of school building construction where said funds are to be repaid over a period of years {\*315} from Direct Charge revenues of that district back to its Maintenance fund.

We believe this matter to be covered by Section 55-603 of the 1941 Compilation, Pocket Supplement, the pertinent portion of which provides as follows:

"The maintenance budget shall not include, either directly or indirectly, any item of expense for adult education, kindergarten or pre-school programs, free school lunches, group insurance, truant officers, contributions to public or private libraries, or salaries for clerks of boards of education of municipal, union high school, or independent school districts; **provided, however, where any school district or districts for which a maintenance budget is made has on hand a cash balance for the preceding year and it is not necessary to use the same as a credit to meet the regular maintenance budget, the regular budget may be supplemented so as to include any of the above items or any other necessary school expense approved by the educational budget auditor and local budget commission having authority**, and in such case said items of expense shall only be paid out of said cash balance; and provided, further, nothing herein contained shall prohibit supplementary expense for any maintenance budget item being included in any direct charge budget provided the same is approved by the state educational budget auditor and the local budget commission having authority."

You will note that this Section prohibits the use of Maintenance fund moneys for certain enumerated items and further states that in certain instances they may be used for such items or for "any other necessary school expense." The use of these moneys for other necessary school expenses is subject to the approval of the Educational Budget Auditor and the local budget commission. It is our opinion that the broad term used covers expense for school building construction if the same is necessary in your opinion and in the opinion of the local budget commission.

You will note that this Section refers only to the absolute transfer and expenditure of Maintenance moneys for Direct Charge purposes. However, if there is the absolute power to use these funds under the enumerated circumstances, then it is our opinion that in giving your approval to this use it would be permissible for you to require that

such moneys be repaid to the Maintenance funds from Direct Charge revenues over a period of years.

It should also be noted that such funds can be used for this purpose only where the school district has on hand a cash balance in the Maintenance fund for the preceding year and where it is not necessary to use this balance as a credit to meet the next year's Maintenance budget.

It would seem further that school building construction could not be considered as a necessary school expense unless the particular school district had bonded itself to the 6% maximum provided by the Constitution.

In summary then, it is our opinion that Maintenance funds may be used for the purpose of school building construction where, in your opinion the same is necessary, the school district cannot issue more bonds, where the school district has on hand a cash {<sup>\*316</sup>} balance in its Maintenance fund which is not needed to meet the coming year's budget, and where the amount of the loan and the manner of its repayment is approved by you and the local budget commission having jurisdiction.

By: Walter R. Kegel

Assist. Attorney General