

Opinion No. 55-6285

September 20, 1955

BY: RICHARD H. ROBINSON, Attorney General

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

You have asked the opinion of this office on the following: The various schools in Socorro County were consolidated into three units, the La Joya District excepted. You were under the impression that the consolidation order was in litigation and therefore instead of preparing the 1955-1956 budgets for the consolidated districts as such, you prepared them by individual school districts. In point of fact there was no litigation pending in connection with the consolidation order, and that order became effective January 1, 1955. You ask for our opinion on the proper procedure to be followed in order that proper budgets may be prepared for the consolidated districts, La Joya excepted.

Pertinent statutes are:

§ 73-7-2, N.M.S.A., 1953:

"The governing boards of all school districts shall submit to their respective school budget commissioners, an estimate of school maintenance and direct district charges of the public schools within their jurisdiction for the ensuing school fiscal year. After January 1st, 1924, such estimates shall be submitted to the school budget commissioners prior to April 15th of each year."

§ 73-7-3, N.M.S.A., 1953:

". . . The governing authorities of any district or districts for which a budget is made shall, at the time of holding the annual budget hearing for any county, present the state educational budget auditor and local budget commission . . ."

§ 73-7-9, N.M.S.A., 1953:

"Not later than June 15th of each year the educational budget auditor shall certify the budgets to the state tax commission."

§ 73-7-10, N.M.S.A., 1953:

"Before July 1st of each year, the state tax commission shall fix the final budget allowances for said schools and thereupon certify same to the board of county commissioners, the county treasurer, and to county, municipal, union high school and independent boards of education. Where section 605 (73-7-9) has been complied with

and the final budget allowances are not made by the state tax commission within the time specified herein, the educational budget auditor shall fix the final budget allowances for said schools, and thereupon certify the same to the said boards and treasurers."

§ 73-7-13, N.M.S.A., 1953:

"Budgets shall not be altered or amended after final approval, except by the state tax commission, after advertisement and public hearing, and no such alteration or amendment thereof shall in any case be made for any year after September 1st."

§ 73-7-14, N.M.S.A., 1953:

"Where the county budget commissioners or governing authorities of the school fail to prepare a budget or estimate hereunder, the educational budget auditor shall prepare the same from such information as he may possess."

§ 11-1-21, N.M.S.A., 1953:

"In addition to the powers and duties now conferred upon the state comptroller (state board of finance), he shall have the following additional powers and duties:

1. Whenever there shall arise in any county, municipality or school district of this state, an unforeseen emergency necessitating the expenditure of funds for a purpose not provided for in the budget of such county, municipality or school district and provided there be funds available to such county, municipality, or school district with which to meet such expenditure, . . ."

The statutes above, summarized, contemplate the following procedure for preparation and approval of budgets and the dates for each step therefor. Before April 15th of each year the school governing boards submit their estimates to the school budget commissioners. The budget commissioners in turn present these to the Educational Budget Auditor, who by June 15th certify the same to the State Tax Commission. The State Tax Commission by July 1st approve and fix the budgets and certify the same to the County Commissioners, the County Treasurers and the Boards of Education. If the State Tax Commission fails to do this within this time, the duty then devolves upon the Educational Budget Auditor to do so. It is noticed that after September 1st no budgets shall be altered or amended in any case. It is apparent that a definite time table is provided for preparing and approving the budgets and the last date is September 1st.

Section 73-7-14, N.M.S.A., 1953, it is seen, provides for a preparation of the budget by the Educational Budget Auditor where the county budget commissioners have not prepared one. This we construe to mean that if by April 15th a budget has not been prepared, then the Educational Budget Auditor does so, but in any event the same must be taken care of by September 1st. What happens then when no budget has been prepared for a district and the date September 1st has passed?

It is the opinion of this office that Section 11-1-21, N.M.S.A., 1953, provides for the proper procedure in such a case. Therefore, it is suggested that the budgets for the consolidated districts be submitted to the State Comptroller and that the approval of the Chief Tax Commissioner and of the Attorney General be secured so that same may be put into effect.

I trust that this answers your inquiry satisfactorily.

By: Santiago E. Campos

Assistant Attorney General