

## Opinion No. 56-6500

July 23, 1956

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

**TO:** Mrs. Georgia L. Lusk, Superintendent of Public Instruction, Department of Education, Santa Fe, New Mexico

In answer to yours of June 28, 1956, regarding "the growing duplication of functions in the area of recreation performed by the New Mexico Commission on Youth and the Division of Health, Physical Education and Recreation in the Department of Education."

We understand the issue to be one of overlapping jurisdiction -- that you wish this office to define, if possible, the respective fields of the Department of Education and the New Mexico Commission on Youth.

Referring to New Mexico Laws 1953, Chapter 106, the original Youth Act, we find:

Section 2. "The Commission shall investigate thoroughly /--."

"The Commission shall have the power to inquire /--."

"The Commission shall make a study /--."

Section 5. "The Commission shall have the power to investigate /--."

Section 6. "The Commission shall make studies /--."

Section 8. "It shall be the duty of the Commission to submit a report --- to the Attorney General, to the Legislative Council --- to any State Correctional Department --- and to the Governor /--."

This office finds the powers and duties of the Commission quite clearly set out in this original Act. The Commission was set up as an investigatory body, given certain powers to accomplish this purpose, and is required to submit a report as above directed.

The 1955 Act, New Mexico Laws 1955, Chapter 170, would seem, among other things, to change the exclusive nature of the Commission by enlarging its function in named specific fields, making it more than an investigatory and reporting body.

Going to the 1955 Act, we find in Section 1 the following:

"The New Mexico Commission on Youth shall be the state agency empowered to officially cooperate with any Federal agency or department established for the collection, organization and interpretation of information concerning children brought to

the attention of the various law enforcement agencies and the juvenile courts of this State.

The New Mexico Commission on Youth is hereby empowered to act and shall be the official state agency for the administration and disbursement of any Federal monies which may be appropriated to the State of New Mexico for the purpose of establishing Youth Assistance Programs, for the improvement of the methods of examination and treatment of juvenile delinquents, for the establishment of education and/or job training programs for persons dealing with youths, and for the establishment of youth assistance programs leading to the improvement of the coordination of the efforts of public and private agencies in the prevention of juvenile maladjustment and/or juvenile delinquency."

Please note that the provisions enlarging the function of the Commission in nowise refer back to the 1953 Act whereby a conclusion may be drawn that the 1955 Act is limited thereby. It is the opinion of this office that we must refer to the plain meaning of the 1955 Act as to the powers and duties of the Commission, from the effective date forward.

In the second paragraph of Section 1, supra, we find the Legislature empowering the Commission to cooperate with the Federal Government, or any agency of the same, "concerning children brought to the attention of the various law enforcement agencies /-- ."

The third paragraph appears to open a completely new phase of operations to the Commission. From exclusively an investigatory and reporting body the Commission is "empowered to **act** and shall be the **official state agency** for the **administration** and **disbursement of any Federal monies** which may be appropriated --- for the purpose of establishing Youth Assistance Programs, for the improvement of the methods of examination and treatment of juvenile delinquents, for the establishment of education and/or job training programs for persons dealing with youths, and for the **establishment** of youth assistance programs leading to the improvement --- of **public** and private agencies in the **prevention** of juvenile maladjustment and/or juvenile delinquency." (Underlining ours).

Hence, in order as they appear in yours of June 28, 1956, this office is of the opinion:

1. The New Mexico Commission on Youth has the power to receive and disburse Federal moneys in the specified fields delineated by the New Mexico Laws 1955, Chapter 170, Section 1.
2. The Commission has a primary responsibility to investigate and make recommendations as provided by the 1953 Act, and to work with any Federal agency as provided by the 1955 Act, including the **prevention** of juvenile delinquency.

3. The Commission has power to investigate all public facilities, including the public school system, and make recommendations to the named public officials and/or bodies -- the Attorney General, the Legislative Council, any state correctional department, and to the Governor.
4. The recreation councils (1953 Act) may recommend programs for all youths, including but not limited to those classified as delinquent and dependent.
5. The Commission has power to form city-wide and county-wide recreation councils for all youth.
6. The Commission, or a recreation council formed by the Commission, has no legal responsibility for advising cities and counties on policies and regulations set forth in the 1955 cigarette tax law.
7. In the absence of further designation by a municipality, a county or a school district, a recreation council formed by the Youth Commission may not receive and/or disburse any moneys pursuant to the 1945 Playgrounds and Facilities Act.

By Howard M. Rosenthal

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