

Opinion No. 59-217

December 30, 1959

BY: OPINION of HILTON A. DICKSON, JR., Attorney General

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

QUESTION

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Can the State Board of Education, by declaring an emergency, transfer \$ 3,250.00 from the Public School Supplementary Assistance Fund to the Mora Independent School District to pay for attorneys' fees, filing fees, and transcript costs incident to litigation in which the Independent School District is involved, such litigation being a suit to test the validity of the existence of such District?

CONCLUSION

No.

OPINION

{*332} ANALYSIS

The Public School Supplementary Assistance Fund is created under the authority of Sec. 73-7-47, N.M.S.A., 1953 Comp. (P.S.), "for the purpose of providing supplemental assistance to the public schools of the State in those **counties that are not able through regular distribution of the State Public School Equalization Fund and their own maximum efforts to meet standards approved by the State Board of Education . . .**"

(Emphasis supplied)

Sec. 73-7-48 provides that \$ 100,000.00 of the Supplemental Assistance Fund shall be held in reserve as an emergency fund to be distributed on emergency as determined by the State Board of Education. It is clear that the State Board of Education has the power to declare an emergency and transfer up to \$ 100,000.00 from the fund for such emergency as determined by the Board. However, the emergency must of necessity be one for which payment from the Supplemental Assistance Fund may legally be made. Under Sec. 73-7-47, the fund can only be used for the purpose of providing supplemental assistance in those counties not able through the regular distribution of the Public School Equalization Fund and their own maximum efforts to meet standards approved by the State Board of Education.

The payment of attorneys' fees, filing fees and transcript costs incident to litigation in which validity of the existence of the Independent School District is at issue is in no way connected with the meeting of standards approved by the State Board of Education.

Therefore, we must conclude that the State Board of Education cannot, by declaring an emergency, transfer \$ 3,250.00 to the Mora Independent School District for the payment of attorneys' fees, filing {*333} fees and transcript costs incident to litigation in which the validity of the existence of the Independent School District is at issue inasmuch as the Supplementary Assistance Fund cannot be legally used for such a purpose.

By: Philip R. Ashby

Assistant Attorney General