

Opinion No. 61-19

February 13, 1961

BY: OPINION OF EARL E. HARTLEY, Attorney General

TO: Honorable Edwin L. Mechem, Governor of New Mexico, Santa Fe, New Mexico

QUESTION

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Is it legal to use the Current School Fund (Sec. 4, Art. XII of the New Mexico Constitution) in the year in which the revenues are actually collected?

CONCLUSION

No.

OPINION

ANALYSIS

Sec. 4 of Art. XII of the New Mexico Constitution establishes the Current School Fund. It provides that all fines and forfeitures collected under the general laws, the net proceeds of property that escheats to the state, the rentals of school lands and other lands granted to the state and income derived from the Permanent School Fund shall constitute the Current School Fund of the state. It further provides that this amount shall be distributed among the various districts after reserving a sufficient amount to insure that school is maintained in all districts for a full 5-month period. You will note that it does not provide the manner and the time for transferring or distributing these funds.

Sec. 73-7-29, N.M.S.A., 1953 Comp., provides for the distribution of the Current School Fund. It provides that annually on July 1, the state treasurer shall certify to the superintendent of Public Instruction and the Educational Budget Auditor the money in the State Common School Current Fund for apportionment and the same shall thereupon be apportioned by said Superintendent and said Auditor. This is the only statute which we have been able to find that controls the distribution and apportionment of the funds in the Current School Fund.

It is evident that there is no constitutional requirement that the Current School Funds be distributed on any certain day. The framers of the Constitution apparently left this to the discretion of the Legislature. The Legislature exercised its discretion by enacting Sec. 73-7-29 to provide that these funds shall be distributed on July 1 of each year. We deem this statute clear in its mandate and do not feel that funds of the Current School

Fund may be distributed at any other time absent an amendment to this section or remedial legislation by the Legislature.

The answer to your question is, then, that it is not legal to use the funds of the Current School Fund in the year in which the revenues are actually collected inasmuch as the Legislature has provided that these funds shall not be distributed until the first day of the fiscal year subsequent to the year of their collection.