

## **Opinion No. 66-21**

February 10, 1966

**BY:** OPINION OF BOSTON E WITT, Attorney General Paul J. Lacy, Assistant Attorney General

**TO:** Mr. Harry Wugalter, Chief, Public School Finance Division, Department of Finance and Administration, State Capitol Building, Santa Fe, New Mexico

### **QUESTION**

#### **FACTS**

The Jal school system has instituted the novel system of including their sixth grade in a junior high school program with the approval of the State Department of Education. This means that the Jal Junior High School is made up of the sixth, seventh and eighth grades, rather than the traditional seventh, eighth and ninth grade composition.

#### **QUESTION**

Since grade six of the Jal schools has been approved for a junior high school program by the Department of Education is the Chief of the Public School Finance Division of the Department of Finance and Administration permitted by Section 73-7-60, N.M.S.A., 1953 Compilation (P.S.) to weight the membership of the sixth grade by the same formula as grades seven and eight of the junior high school?

#### **CONCLUSION**

No.

### **OPINION**

#### **{\*24} ANALYSIS**

Section 73-7-60, supra, sets forth at length the method for weighting membership. For purposes of this opinion it is only important that we point out that the weighting factor for a junior high is higher than is the weighting factor for the elementary grades. If the Jal sixth grade is determined to fall within the junior high factor set forth by 73-7-60, supra, it will receive a greater allocation of funds than if it is determined to be an elementary grade for weighting purposes.

Section 73-7-60, supra, also sets forth, in pertinent part, the following:

". . . For schools which have an elementary program and a junior high or high school, or both, the membership of the elementary program shall be weighted separately by the

elementary factor. For schools which have both high school and junior high school programs, the membership of the programs shall be weighted separately. For schools {25} which are classified as high schools, but which consist of grades seven through twelve, the membership of grades seven through nine shall be weighted as a junior high, and the membership of grades ten through twelve shall be weighted as a high school. For a school which is classified as a high school but which consists of grades one through twelve, the membership of grades one through six shall be weighted as an elementary school, the membership of grades seven through nine shall be weighted as a junior high school, and the membership of grades ten through twelve shall be weighted as a high school. For a school classified as an elementary school but which includes grades one through eight, the membership of grades one through six shall be weighted separately by the junior high factor for a membership equal to one and one-half times the actual membership, and unless classified by the state board as an approved junior high actual membership shall be used. The membership of programs of education for handicapped children approved by the state board of education shall be separately weighted by a factor of two."

It has been suggested that by referring to a junior high school program in the quoted portion of 73-7-60, supra, the legislature intended that the weighting should be done by programs, not grades. This view does not take into account the definitions for certain words in the Public School Finance Act, which are found in 73-7-57, N.M.S.A., 1953 Compilation (P.S.), Subsections (G) and (H), supra, which read as follows:

"G. 'Elementary' refers to grades one through eight, **unless there is a junior high school program approved by the state board of education, in which case it means grades one through six;**" (Emphasis supplied).

"H. 'Secondary' refers to grades nine through twelve, **unless there is a junior high school program approved by the state board of education, in which case it means grades seven through twelve.**" (Emphasis supplied.)

Sections 73-7-57 (G) and (H), supra, conclusively show that the legislature never intended the words "junior high school program" to encompass the sixth grade. By so defining these words in the section on definitions the legislative intent must be carried into all sections of the Public School Finance Act.

Therefore, for the purposes of weighting school membership under Section 73-7-60, supra, the sixth grade of the Jal Schools may not be weighted by the junior high factor.