

Opinion No. 67-128

October 31, 1967

BY: OPINION OF BOSTON E. WITT, Attorney General

TO: Inez B. Gill Legislative Fiscal Analyst Legislative-Executive Building Santa Fe, New Mexico

QUESTION

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1. What does the term "public money" mean as used in Section 6-5-18 (B) of the Public Purchases Act?
2. Are "school activity funds" considered "public money" for purposes of this Act?

CONCLUSIONS

1. See Analysis.
2. See Analysis.

OPINION

{*203} ANALYSIS

In Attorney General Opinion No. 62-9, issued January 19, 1962, this office said that:

"Although many definitions of the term 'public moneys' may be found, the generally accepted concept is described by the Court in **Storen v. Sexton**, 209 Ind. 589, 200 N.E. 251 as:

' . . . all funds impressed with a public interest, that is, funds raised by general taxation, or special levies upon special assessment districts, or the income from publicly owned properties, or funds arising from private sources in the hands of public officers which are designed for public use. . . ."

Subsequently, in Attorney General {*204} Opinion No. 62-71, issued June 15, 1962, this office relying on Attorney General Opinion No. 62-9, supra, stated that "school activity funds" are clearly "public moneys". The above would appear to answer both questions, if this office had not issued an advisory letter stating that "school activity funds" may not be public moneys. As will be seen below, however, this advisory letter and our earlier opinion are consistent if we look to the reasoning behind the letter and the opinion.

The advisory letter was based upon information found in Chapter IX of the Manual of Procedure for Uniform Financial Accounting and Budgeting for New Mexico School Districts, published by the Public School Finance Division of the Department of Finance and Administration. Chapter IX (A) "Auxiliary Funds" states in part as follows:

"School activities are those activities that are financed in whole or in part by the operation of the school activity program and have their money accounted for in the individual school. They may be of a classroom or extra-classroom nature and may include student clubs, organizations, student publications, sale of merchandise through a school store or other class activities."

From the above explanation of "school activities" this office evidently inferred, when issuing its advisory letter, that these funds were merely student moneys held in trust by the school for the benefit of the child and were not moneys held for a public purpose.

On the other hand, Attorney General Opinion No. 62-71 was probably based on the same reasoning found in **State ex rel Board of Governors of W. Va. University v. Sims**, 134 W. Va. 428, 59 S.E.2d 705 (1950). In this West Virginia decision it was held that compulsory student athletic fee collections, gate receipts and guarantees were public moneys. The reason given by the court was that the athletic activities of the university are a part of the system of public education and therefore the money expended in furtherance of athletic activities was money spent for a public purpose.

From the foregoing it is the opinion of this office that the term "public money" as used in the Public Purchases Act is to be defined in its usual sense as set forth in the quote from **Storen v. Sexton**, in Attorney General Opinion 62-9 set forth above. Furthermore, while some of the funds set forth in Chapter IX (A) of the Manual of Procedure for Uniform Financial Accounting and Budgeting, *supra*, are not public moneys, it is clear that funds used for such things as student publications are funds spent for a public purpose and therefore must be classified public moneys. Clearly moneys derived from gate receipts and compulsory student athletic fee collections are "public moneys". Moneys held by the school to purchase student class rings are not moneys held for a public purpose, but are moneys held in trust for the student and therefore are not public moneys.

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