

Opinion No. 69-06

February 4, 1969

BY: OPINION OF JAMES A. MALONEY, Attorney General

TO: Hon. Thomas W. Hoover, State Representative, House of Representatives,
Legislative-Executive Bldg., Santa Fe, New Mexico

QUESTIONS

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Is House Bill 61, the Nonpublic Education Act, in its proposed form, constitutional?

CONCLUSION

See analysis.

OPINION

{*10} ANALYSIS

House Bill 61, the proposed "Nonpublic Education Act," if enacted, would create a "nonpublic elementary and secondary education fund" from the proceeds of the taxes collected under the Liquor Excise Tax Act and the Racing Admissions Tax levied pursuant to Section 60-6-9, N.M.S.A., 1953 Compilation. It provides that the money deposited in the nonpublic elementary and secondary education fund would be used by the State Superintendent of Public Instruction to "purchase secular education service." The maximum "reimbursement" to a secular school by the State Superintendent for educating nonpublic school pupils would be \$ 200.00 per average daily membership of each "contracting" nonpublic school. In essence, then, House Bill 61 provides for support by the State of New Mexico for secular education at a rate not exceeding \$ 200.00 per pupil attending nonpublic schools in this State.

I direct your attention to three provisions of the New Mexico Constitution. Article XII, Section 3 of the New Mexico Constitution, provides in part as follows:

"The schools, colleges, universities and other educational institutions provided for by this Constitution shall forever remain under the exclusive control of the state, **and no part of the proceeds arising from . . . and . . . funds appropriated, levied or collected for educational purposes, shall be used for the support of any sectarian, denominational or private school college or university.**" (Emphasis mine)

Article IV, Section 31, provides:

"No appropriation shall be made for charitable, educational or other benevolent purposes to any person, corporation, association, institution or community, not under the absolute control of the state, {*11} but the legislature may, in its discretion, make appropriations for the charitable institutions, and hospitals, for the maintenance of which annual appropriations were made by the legislative assembly of nineteen hundred and nine. (Emphasis mine)

Article IX, Section 14, provides:

"Neither the state, nor any county, school district, or municipality, except as otherwise provided in this Constitution, shall directly or indirectly lend or pledge its credit, or make any donation to or in aid of **any person, association or public or private corporation,** or in aid of any private enterprise for the construction of any railroad; provided, nothing herein shall be construed to prohibit the state or any county or municipality from making provision of the care and maintenance of sick and indigent persons." (Emphasis mine)

It is my opinion that all three of the above quoted constitutional provisions would be violated if public money is disbursed to nonpublic schools under the provisions of House Bill 61.

I wish to emphasize that nothing in this opinion should be construed as being an expression of opinion on the constitutionality under the United States or New Mexico Constitutions of any existing federal or state program which may directly or indirectly result in aid to a student attending a nonpublic school in this State.