

## **Opinion No. 71-88**

July 19, 1971

**BY:** OPINION OF DAVID L. NORVELL, Attorney General

**TO:** Mr. Ronald W. Coss Director Legislative School Study Committee 329 State Capitol  
Santa Fe, New Mexico 87501

### **QUESTIONS**

#### QUESTIONS

1. Can the New Mexico Activities Association, or other non-public organizations, utilize public monies collected as dues, fees or gate receipts on a retirement program for employees of the Association?
2. Can public school districts assign funds from the general education appropriation to be used to pay dues to the:
  - (a) New Mexico Activities Association;
  - (b) New Mexico Research and Study Council;
  - (c) Eastern New Mexico School Research and Study Council;
  - (d) New Mexico School Boards Association;
  - (e) North Central Association of Colleges and Secondary Schools; for memberships for: (1) school districts; (2) individual schools; or (3) individual school personnel?
3. Given the fact that educational standards adopted by the state board of education include activity programs as an integral part of the curriculum of a school, does it follow that the state board of education has a legal responsibility to control, manage and direct activity programs and develop standards for such programs through the department of education as it does for other programs within the curriculum?

#### CONCLUSIONS

1. Yes, so long as there is compliance with the limitations herein expressed.
2. School district memberships in the subject organizations may be paid with public funds under the limited conditions herein expressed.
3. Not in the usual manner under present legislation.

## OPINION

### {\*127} ANALYSIS

1. Our conclusion herein is specifically limited to the New Mexico Activities Association. We are not in a position to advise on other unnamed associations since we obviously do not have their rules and regulations. As to the New Mexico Activities Association, question one was answered with a qualified "yes" in Attorney General Opinion No. 63-5, issued January 29, 1963. The conclusion was summed up in the following language:

"Therefore, it is our opinion that the association [New Mexico Activities] may properly expend for a retirement program a portion of the moneys received from membership dues contributed by the various {\*128} member public schools, as long as such utilization of moneys does not negate or make insignificant the amount or type of actual direct assistance or benefits bestowed by the association to the public schools participating."

There is an additional important limitation regarding a retirement program for New Mexico Activities Association employees. In absolutely no event should the State Board of Education approve any Association rule which would result in the payment of more **public money** as the employer's contribution to the retirement program for an employee than a school district pays as the employer's share to the educational retirement fund for one of its employees. This is the best way, perhaps the only one, to insure that benefits which the schools are receiving from the Association are not unconstitutionally diluted by an undue diversion of these public funds to a non-public retirement program.

2. Attorney General Opinion No. 63-5 also deals with your second question. Public school districts may, **as a legal proposition**, use public funds to pay dues to the organizations named if, and only if, the school district receives commensurate **benefits** from the organization. If it does not, such payment violates the anti-donation provision of Article IX, Section 14, New Mexico Constitution. For this same reason, such dues probably cannot be paid for an individual and probably not for an individual school where there is more than one school in the school district. We would need more detail on the factual circumstances surrounding the latter two situations.

3. Your third question involves a matter which has been the subject of some administrative difficulty over a period of years. The pertinent statute is Section 77-2-2, N.M.S.A., 1953 Comp., which sets forth the duties of the State Board of Education. It provides that the State Board of Education shall:

"S. approve all rules or regulations promulgated by any association or organization attempting to regulate any public school activity, and invalidate any rule or regulation in conflict with any regulation promulgated by the state board. The state board shall have no power or control over the rules or regulations, or the bylaws governing the administration of the internal organization of the association or organization;

"T. review decisions made by the governing board or officials of any organization or association regulating any public school activity, and any decision of the state board shall be final in respect thereto."

These provisions are unusual. What they do is give the State Board of Education a "veto power" over the rules and regulations of the New Mexico Activities Association (other than the latter's internal organization). The Board, then, has "after the fact" control over the Association's regulation of any public school activity. This, of course, limits the Board's **initiative** in directing and developing standards in certain phases of public school activity, particularly those involving athletics.

This unique statutory method of "directing and controlling" an important phase of public school activity is certainly one which the Legislature in Senate Memorial 33 requested the Legislative School Study Committee to review.