

Opinion No. 74-29

August 29, 1974

BY: OPINION OF DAVID L. NORVELL, Jane E. Pendleton

TO: Mr. Harry Wugalter Chief, Public School Finance Division Department of Finance and Administration Executive Legislative Building Santa Fe, New Mexico 87501

QUESTIONS

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1. What is the statutory authority of this office in regard to budgets that are established, adopted and implemented by federal agencies and/or the State Department of Education for school districts in which this office is requested to approve total amounts but never to review and pass judgment on the individual line items?
2. Can an individual who is neither a public employee nor a state officer be paid under the Per Diem and Mileage Act for attending programs on behalf of a school district pursuant to a federal granting statute for aid to education?

CONCLUSION

See analysis.

OPINION

{*57} ANALYSIS

As you point out in your letter, the General Appropriation Act of 1974, House Bill 300, Chapter 3, Laws of 1974 {*58} (Special Session), contains the following language with respect to public school expenditures:

"Expenditures of all funds from any source whatsoever shall be made only in accordance with budgets approved by the department of finance and administration as provided by law."

Identical language was contained in the General Appropriation Acts of 1970, 1971, 1972 and 1973. Prior General Appropriation Acts contained similar language.

The legislature has provided for review and approval of the budgets of the several public schools and school districts in the "Public School Finance Act." Sections 77-6-1 through 77-6-46, NMSA, 1953 Comp., as amended. The "Public School Finance Act" confers upon the Public School Finance Division of the Department of Finance and Administration the following responsibilities:

"Public school finance division -- Duties. -- In addition to other duties provided by law, the division shall:

A. prescribe the forms for, and supervise and control the preparation of, **all budgets** of all public schools and school districts;

B. compile accurate information concerning public school finance and administration; and

C. advise and consult with the state superintendent in regard to financial matters affecting public schools and school districts." (Emphasis added).

The following section, Section 77-6-5, NMSA, 1953 Comp., grants to the division the authority to compile a manual of regulations for a system of accounting and budgeting for all public schools.

We are unable to find any statutory language which exempts budgeting of federal aid from these general requirements. Indeed, Sections 77-7-2 and 77-7-5, NMSA, 1953 Comp., which deal specifically with federal aid to education, contain no indication that federal funds are subject to different budgeting requirements. Section 77-7-2, **supra**, designates the State Board of Education as the agency responsible for administration or supervision of administration of federal funds. See also Section 77-2-2, NMSA, 1953 Comp. (1974 I.S.). And Section 77-7-5, **supra**, provides:

"Custody of funds -- Budgets -- Disbursements. --

A. The state treasurer shall be the custodian of all funds received by the state by virtue of a federal statute, gift or grant relating to aid for education, school construction, or school lunch programs. The state treasurer shall hold these funds in separate accounts according to the purpose of the grant or gift.

B. All federal funds, gifts or grants administered by the state board shall be budgeted, accounted for, and disbursed as provided by law, and by the regulations of the department of finance and administration. " (Emphasis added).

We believe the legislative intent is very clear that federal funds for aid to public schools be budgeted and accounted for according to Department of Finance and Administration requirements.

Further such evidence is found in the statute relating to vocational education or rehabilitation which contains language similar to that above:

"B. All state funds, federal aid funds, or grants to the state relating to vocational education **shall be budgeted and accounted for as provided by law and by the regulations of the department of finance and administration.** Such funds or grants

shall be disbursed by warrants of the department of finance and administration on vouchers issued by the director of vocational education.

{*59} C. All state funds, federal aid funds, or grants to the state relating to vocational rehabilitation **shall be budgeted and accounted for as provided by law and by the regulations of the department of finance and administration.** Such funds or grants shall be disbursed by warrants of the department of finance and administration on vouchers issued by the director of vocational rehabilitation." Section 77-12-8, NMSA, 1953 Comp. (Emphasis added)

Therefore, we are of the opinion that under the New Mexico statutory scheme, public school budgets for use of federal funds are to comply with Department of Finance and Administration regulations as established by the Public School Finance Division, and that division is responsible for approving such budgets. You have advised us that this conclusion may raise the possibility of conflict with individual federal granting laws. If such cases of conflict do arise, they will have to be dealt with singularly and in consultation with federal authorities. We believe that the legislature did not envision the **loss** of federal aid to education because of budget requirements which may conflict with a federal statute in this regard. We note Section 77-2-2, **supra**, which provides:

"State board -- Duties. -- Without limiting those powers granted to the state board pursuant to section 77-2-1, NM SA, 1953, the state board shall perform the following duties:

* * *

P. accept and receive all grants of money from the federal government or any other agency for public school purposes and disburse the money in the manner and for the purpose specified in the grant.;"

In answer to your second question, the Per Diem and Mileage Act, Sections 5-10-1 through 5-10-4, NMSA, 1953 Comp. establishes the standard reimbursement rates for only "public officers and employees." These two terms are defined in Section 5-10-2.1, **supra**, as follows:

"Definitions. -- As used in the Per Diem and Mileage Act [5-10-1 to 5-10-4];

B. "employee" means any person who is in the employ of any state agency or local government and whose salary is paid either completely or in part from public money, but does not include witnesses attending judicial or other proceedings, jurors, or jury commissioners.

* * *

E. "public officer" means every elected or appointed officer of the state or local government."

This does **not** mean, however, that a person **not within these definitions** who performs a service for or on behalf of a public school under the provisions of a federal aid law cannot be reimbursed for his expenses. For example, a parent who, pursuant to the provisions of a federal aid statute, attends a seminar on behalf of a school district could be paid expenses or per diem and mileage pursuant to an agreement between the parent and the school district. This payment would not necessarily be limited to the standard set forth in the Per Diem and Mileage Act.

Future specific cases may require consideration independent of this opinion.

In connection with this Opinion, we have reviewed the recent decision of the New Mexico Supreme Court in **State ex rel Seago v. Kirkpatrick, et al.**, No. 9973, decided July 19, 1974. Nothing in this Opinion conflicts with that ruling of the Supreme Court.

Assistant Attorney General