

Opinion No. 74-30

September 9, 1974

BY: OPINION OF DAVID L. NORVELL, Attorney General

TO: Maxine Gerhart, Director Department of Finance and Administration State Capitol
Santa Fe, New Mexico 87501

QUESTIONS

QUESTIONS

1. Is the Chief of the Public School Finance Division authorized to make a supplementary distribution to the Gallup-McKinley County School District for the purpose of covering costs of equalizing Indian versus non-Indian expenditures within the District?
2. In calculating the payment to be made to school districts under Section 22, Chapter 8, Laws of 1974, what figures should the Chief use to determine each district's allocation for "save harmless?"
3. Shall the Chief use revenue actually received during the 1972-73 fiscal year, but expended during the 1973-74 fiscal year in establishing the "save harmless" requirement under Section 22, Chapter 8, Laws of 1974?

CONCLUSIONS

1. No.
2. The amount of P.L. 874 money actually received by the district in the 62nd fiscal year is the appropriate figure to be used in calculating payments under this section for subsequent years.
3. No.

OPINION

{*60} ANALYSIS

Question 1

The controlling statute is Section 77-6-30, NMSA (Section 18, Chapter 8, Laws of 1974) which is not ambiguous. This section establishes a state support reserve fund that is to insure that each district will receive \$ 616.50 per program unit, subject to legislative

limitations, in the event that the regular appropriation is not sufficient to provide that sum. Specifically, Section 77-6-30 (B), **supra**, provides:

"The state-support reserve fund shall be used only to augment the appropriations for the state equalization guarantee distribution in order to insure, to the extent of the amount undistributed in the fund, that the maximum figures for such distribution established by law shall not be reduced."

Additionally, as Section B and Section F clearly indicate, distribution from the state support fund must be according to the same criteria as distribution under the equalization guarantee formula. Section 77-6-30 (F), **supra**, states:

"Distribution from this fund shall be made in the same manner and on the same basis as the state equalization guarantee distribution."

Distributions from the state support reserve fund can only be utilized to cover "program cost." "Program cost" is defined in subsection H of Section 1, Chapter 8, Laws of 1974 (Section 77-6-2 (H), NMSA, 1953 Comp.) as, "the product of the total number of program units to which a school district is entitled multiplied by the dollar value per program unit established by the legislature." The "program units" to be itemized in arriving at "program cost" are further set forth in Section 8, Chapter 8, Laws of 1974 (Section 77-6-18.1, NMSA, 1953 Comp.). Since the new funding formula very precisely defines the manner in which "program cost" is to be calculated, the Chief lacks authority to expand the definition of that term administratively. The state support reserve fund can only be used to guarantee that the "program cost" is met and, therefore, the use of that fund by the Chief to cover costs of equalizing Indian versus non-Indian expenditures within a particular district would be contrary to law.

Question 2

The general purpose of Section 22 of Chapter 8, Laws of 1974 is to provide that districts have the same level of funding available in the 63rd fiscal year as they had available from specified sources in the 62nd fiscal year. This section provides that a save-harmless distribution will be made in the event that funding available in the 63rd fiscal year is less than that available from specified sources in the 62nd fiscal year. The statute specifies the manner in which the Chief shall compute any such distribution. Section 22 (B) states that the Chief "shall compute the sum of revenues **received** during the 62nd fiscal year from . . . P.L. 874 . . ." Since the language prescribing the method of the computation is clear the Chief is limited to consideration of the P.L. 874 funds actually "received" in the 62nd fiscal year.

Question 3

Revenue actually received in the 61st fiscal year, even if expended in the 62nd fiscal year, is not "received" in the 62nd fiscal year and, therefore, it may not be used in calculating the save-harmless distributions.