

Opinion No. 75-30

May 9, 1975

BY: OPINION OF TONEY ANAYA, Attorney General

TO: Mr. Leonard J. De Layo Superintendent of Public Instruction State Department of Education State Education Building Santa Fe, New Mexico 87503

QUESTIONS

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1. If the estimated budget submitted by a local school board does not exceed the total projected resources of the school district and complies with the law and regulations in the manual of accounting and budgeting of the public school finance division, does the chief of the public school finance division have the power to substitute for a proposed line item amount, an amount which in his judgment is preferable?
2. Does this power of the chief over the line item amount differ in regard to budgeting of federal categorical funds flowing through the State Department of Education?

CONCLUSIONS

1. No.
2. No.

OPINION

{*91} ANALYSIS

1. The chief of the public school finance division does not have the power to unilaterally revise an estimated budget properly submitted by a local school board. The independent authority of the public school finance division to formulate a budget is limited solely to those cases where the local board fails or is deemed to have failed to have submitted a budget pursuant to Section 77-6-6, NMSA, 1953 Comp. and those cases are specifically excluded from this question.

Ordinarily the estimated budget for a local school district is prepared by the local board and the chief. The statutes provide at Section 77-6-11, NMSA, 1953 Comp. that:

Prior to June 20 of each year, each local school board and the chief shall, at a public hearing of which notice has been published by the local school board, {*92} fix the estimated budget for the school district for the ensuing fiscal year.

This provision, being the only section of the Public School Finance Act [Sections 77-6-1 through 77-6-46, NMSA, 1953 Comp. (1973 Supp.)] pertaining directly to the formation and submission of the estimated budget, other than Section 77-6-6, **supra**, must be deemed as controlling the question presented.

Section 77-6-11, **supra**, is, however, not sufficiently specific on its face to dispose of the question. It does not, for example, define the relative input or control of either the local board or the chief. It does not give the chief **explicit** authority to make unilateral changes. Nor can it be argued that the statutes give the chief such **implied** authority. An analysis of other provisions of the Public School Finance Act, **supra**, particularly those pertaining to the budget, will demonstrate that the legislature did not intend that the chief have implied authority under Section 77-6-11, **supra** to make substantive line item changes.

The act, generally, at Section 77-6-4, NMSA, 1953 Comp. directs that the public school finance division shall:

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

This overall grant of authority is, however, more properly applicable to procedural rather than substantive budget considerations.

In the budgetary process itself, after the submission of the estimated budget, the division is granted the authority to make corrections, revisions, and amendments to bring the estimated budget into conformity with the law and with the manual of accounting and budgeting and then finally, to certify and approve the final budget. Section 77-6-12, NMSA, 1953 Comp. Legislative intent to limit the chief's power can be found in the fact that this provision as well as Section 77-6-6, **supra**, specifies with some particularity what constitutes a deficiency in the estimated budget. In Section 77-6-6, **supra**, a budget fails when it is in excess of projected resources or for noncompliance with the law or the division manual. Section 77-6-12, **supra**, permits the division to correct, revise or amend only to conform to the law or the regulatory manual. By defining the scope of reviewable deficiencies in the estimated budget, other deficiencies are, perhaps, not to be considered. The implication is that unless an item in the budget conflicts with a specific law or regulation, no changes can be made. It would follow, therefore, that there can be no authority given to the chief to make discretionary substantive corrections.

After division approval, the chief has the authority to alter or amend the final budget but only upon written request of any local school board. Section 77-6-13, NMSA, 1953 Comp. Since the chief clearly has no authority under this provision to alter the final budget without direction from the local school board, the intent again appears to be one of limiting the chief's authority to act independently in the budget forming process.

Recent changes in Section 77-6-29, NMSA, 1953 Comp. (1973 Supp.) also support a construction of Section 77-6-11, **supra**, which limits rather than enlarges the independent authority of the {93} chief. Prior to 1971, this section was entitled "Chief's discretionary distribution." The revisions made in the new section, now entitled "Supplemental distribution - determination," tend to restrict the authority of the chief to make distributions by including greater statutory particularity and, in some cases, requiring consultation with the state superintendent.

There are other reasons not to construe Section 77-6-11, **supra**, as granting the chief implied authority to make discretionary changes in the estimated budget. To do so would be contrary to the policy expressed by the constitution and the statutes which vest control over public schools in the state and local boards of education. Article XII, Section 6 of the New Mexico Constitution provides that the state board shall determine school policy and shall have control, management and direction of public schools. Section 77-4-2 of the Public School Code, NMSA, 1953 Comp. gives the local school board control over the schools in its district, subject to the regulations of the state board. A construction of Section 77-6-11, **supra**, which would divert ultimate control from the boards of education to the department of finance and administration, through the chief, by allowing him to make unilateral budgetary decisions is in derogation of the fundamental principle that policy and control of public education rests with duly constituted or elected boards of education.

Furthermore, there is no public purpose to be served by granting the chief this authority. There are other provisions in the statutes for correcting improper budgeting and expenditures by the local board. Sections 77-6-10 through 77-6-10.2, NMSA, 1953 Comp. (1973 Supp.) detail procedures to be implemented in the event the local school board does not budget its money so as to "maintain requirements for a school district as prescribed by law and standards and regulations as prescribed by the school board." By providing a means whereby substantive budget deficiencies are to be reviewed and corrected, it cannot be said that the legislature left that power within the implied authority of the chief. Ultimate budgetary responsibility apparently belongs to local boards until it is shown that there is some failure of that responsibility.

Finally, the argument can be made that the chief may not exercise discretionary power under statutes which grant him express powers because the statutes do not provide any reasonable standards as a guide in the exercise of such discretionary power. See **Amador v. New Mexico State Bd. of Educ.**, 80 N.M. 336, 455 P.2d 840 (1969).

2. The chief is at least as limited in his authority over line item amounts in the budgeting of federal categorical funds as he is in the budgeting of state funds. He is arguably more limited in the case of federal funds because of the statutory insistence that the state board of education be the sole administrator of such funds.

Section 77-7-2, NMSA, 1953 Comp. directs that:

The state board shall be the sole educational agency of the state for the administration of any state plan established or funds received by the state by virtue of any state statute relating to aid for education, school construction, or school lunch programs . . .

(See also Section 73-6-37.1, NMSA, 1953 Comp.) This provision {**94*} would seem to vest all substantive control of the expenditure of federal funds in the state board, or in the case of Section 73-6-37.1, **supra**, in the superintendent of public instruction. Section 77-7-3, NMSA, 1953 Comp., in specifying the powers and duties of the state board with respect to federal funds, clearly does not intend any other agency, including the public school finance division, to participate in the planning for the use of federal funds. It would, therefore, be improper to imply a power on the part of the chief to affect such plans by allowing him discretionary authority over line items in any budgeting of federal money.

In particular, with respect to the budgeting of federal funds, the statutes provide at Section 77-7-5 (B), NMSA, 1953 Comp. that:

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.

(See also Section 77-12-8, NMSA, 1953 Comp. for similar provision regarding, specifically, federal funds for vocational rehabilitation.)

The broad reference in Section 77-7-5, **supra**, to the regulations of the department of finance and administration cannot be construed as granting the public school finance division or the chief any greater budgetary power than they are given in the more specific provisions of the Public School Finance Act, **supra**. That is, Section 11-1-28, NMSA, 1953 Comp. creates the public school finance division as a component part of the department of finance and administration. Section 77-6-4, **supra**, provides that the public school finance division shall supervise and control **all** budgets of the public schools. However, as demonstrated in our answer to question 1, that supervision or control does not include a grant of power to the public school finance division or its chief to make discretionary substantive line item allocations in estimated budgets.

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