

Opinion No. 23-3703

May 8, 1923

BY: MILTON J. HELMICK, Attorney General

TO: Requested by: Miss Isabel L. Eckles, Superintendent of Public Instruction, Santa Fe, New Mexico.

Under the School Code, Chapter 148 of the Laws of 1923, Estimated Increase in School Attendance May be Anticipated by an Emergency Fund in the Budget.

OPINION

{*53} This inquiry arises under the following facts: A number of school districts in the State have been abandoned by many of the inhabitants during the past year, on account of the unusual drouth. It now seems likely that these inhabitants will return in large numbers. Under the new school code, budgets for school purposes must shortly be made up and estimates of the expense of each school district for the coming year must be settled therein; such estimates are largely based upon the expenses of the previous school year and the number of teachers to be employed in each district is computed upon the basis of average daily attendance. If the people return to these districts, as is anticipated, then the school attendance will be much larger than during the past school year and it is obvious that budget estimates based on the expense of the past school year will doubtless be inadequate.

Inquiry is made whether it would be lawful to estimate such increased attendance, and make provision for the same in the budget under the head of "Emergency Fund" with a view to having part of the emergency funds transferred to other funds to meet increased requirements.

Section 604 of the new school code provides for the emergency fund item in the budget and authorizes the transfer of this fund as the State Tax Commission may direct. In my opinion the sudden increase in attendance of the school district, caused by the {*54} return of the people who had formerly abandoned it, is an emergency and the difficult situation created by such influx can properly be met by recourse to the emergency fund in the shape of a transfer directed by the State Tax Commission.

I think that the Emergency Fund provision of the school code was designed to meet a situation such as this one, and it is proper to anticipate the happening of the emergency by providing a sufficient Emergency Fund to meet it in case it arises. If the estimated attendance is reached, transfer from the emergency fund can then be made to other divisions as may be necessary to meet the exigencies of the case.