

Opinion No. 23-3713

June 26, 1923

BY: JOHN W. ARMSTRONG, Assistant Attorney General

TO: Requested by: Hon. Juan N. Vigil, State Auditor, Santa Fe, New Mexico.

Appropriations Made for Indigent Students Under Chapter 201 S. L. 1921 Should be Paid Notwithstanding Section 1431 Chap. 148, S. L. 1923.

OPINION

{*65} Your inquiry as to the effect of Sec. 1431 of Chap. 148, S. L. 1923 on the provisions of Chap. 201, C. L. 1921 involves the following purported facts:

Some of the members of the Fifth Legislature, acting under the provisions of said Chap. 201, appointed certain indigent students for a term of four years in conformity with such provisions.

Such students and their parents accepted the appointments, made great sacrifices to obtain the additional necessary expenses, made their choice of educational institutions, and some are now students actually pursuing the four-year courses provided by the institutions named in the Act, and have otherwise changed their positions and future plans by reason of such appointments.

The 1921 Act made the necessary appropriations to carry out, in good faith, the obligation on behalf of the State. The Act specifically provides: "One hundred dollars per school year is hereby allowed to each of such students to apply on the actual and necessary expenses while in attendance at such institutions."

Sec. 2 of the 1921 Act provided that such appointments were to be made on or before Sept. 1, 1921 and that the same should be in force and effect for four years thereafter. Apparently nothing more may be done under the provisions of this Act which has not already been accomplished, and which the Act of 1923 may not nullify by the attempted repeal. Only members of the Fifth Legislature, {*66} under the provisions of the 1921 Act, could exercise this power of appointment, hence it is uncertain what object the Sixth Legislature had in enacting the attempted repeal after this power had already been exercised by members of the former body. In any event, however, it is apparently ineffective to accomplish any substantial alteration of rights already vested prior to March 13, 1923.

Notwithstanding the foregoing, that portion of the Act of 1923, attempting to repeal Chap. 201 of the Session Laws of 1921, is probably unconstitutional in view of the recent opinion of the State Supreme Court holding that the subject of every bill must be clearly expressed in its title, and no bill embracing more than one subject shall be

passed. The attempted repeal in question is hidden away in the repealing clause of Chap. 148, S. L. 1923, commonly known as the "School Code." According to our view, the subject of the "School Code" and the matter intended by the Legislature to be covered thereby, are wholly unrelated to the matters covered by the attempted repeal.

Where the appointment of an indigent student has been made in conformity with Chap. 201, S. L. 1921, we think the appropriations therein specified should be paid accordingly, notwithstanding the provisions of Sec. 1431, Chap. 148, S. L. 1923.