

Opinion No. 38-2056

September 23, 1938

BY: FRANK H. PATTON, Attorney General

TO: Mr. H. R. Rodgers Superintendent of Public Instruction Santa Fe, New Mexico

{*280} I have your letter of September 23 regarding the sponsoring of a WPA project by the State Department of Education for the inauguration and supervision of a state-wide library service for public schools.

You make reference to Section 133-201, New Mexico Statutes Annotated, 1929 Compilation, which creates a state library extension service for New Mexico.

Under this provision such state library extension service is created with provision for the appointment of a director by the Board of Regents of the State Museum of New Mexico.

The director of said state library extension service must also serve under the statute as librarian for the State Museum, and he has the power to accept in the name of the state, books, periodicals, money, real estate or other properties for the purpose of promoting the work of the state library extension service.

The purpose of the service is prescribed by the statute and is to give advice and counsel to all public libraries {*281} and to all communities wishing to establish free libraries as to the best means of establishing and administering such libraries. It may purchase books, provide and circulate traveling library collections, circulate books to libraries, schools, communities, hospitals, study groups, charitable and penal institutions and individuals, and it may cooperate with the extension directors of the state educational institutions.

It is my belief that this statute provides for a medium, or perhaps I should say an agency, which is separate and distinct from any agency of the public school system of the state, but there is a possibility that some sort of cooperative agreement might be entered into between this agency and the proper school authorities.

The Constitution of the state by Section 6, Article XII, creates a state board of education and provides that the control, management and direction of all public schools under such regulations as may be provided by law shall be in the said state board of education.

Also by Section 120-101, New Mexico Statutes Annotated, 1929 Compilation, the state board of education is constituted the governing authority of all public, elementary and high schools of the state and said board shall determine the educational policies of the state.

Specific powers have also been granted to the State Board of Education by Chapter 119 of the Session Laws of 1931 which is amendatory of prior laws, and we find that in part power has been granted to adopt a system of school books for use in the first eight grades of the public schools, and when funds are available, to purchase and loan text-books to all pupils in public day and evening schools of all elementary, junior high and high school grades.

Perhaps this strictly has reference to what we ordinarily refer to as the free text-book provision, but it would seem that under the broad powers of the State Department of Education a library extension service for the public schools could be instituted.

It is my belief that if the Department of Education desires to sponsor a WPA project of this nature, that it could be done independently of provisions of Chapter 133-201 creating the state library extension service, believing, as I have heretofore stated, that this agency is separate and distinct from the public school system. The state library extension service is directly under the control and jurisdiction of the Board of Regents of the State Museum, but it would seem that if they desire a cooperative agreement of some sort it could be effected between them and the State Board of Education.