

Opinion No. 39-3102

April 18, 1939

BY: FILO M. SEDILLO, Attorney General

TO: Mr. R. H. Grissom, Educational Budget Auditor, Santa Fe, New Mexico.

{*35} Mr. Nevius has handed to me your letter of April 16, 1939, addressed to the State Treasurer and the State Auditor with the request that I advise you whether it is all right.

I presume that by this you mean to inquire whether or not this letter of April 16, 1939, is sufficient to correct the erroneous certificate filed by you and Mr. Rodgers on September 1, 1938, with the State Treasurer and State Auditor, under the provisions of Section 2, Chapter 66, Laws of 1935, and which did not comply with that law in that, first, it required the distribution of the entire estimated equalization fund for the present fiscal year, to-wit, \$ 3,800,000.00, to be distributed on the percentages given by that letter, and which were determined upon a figure of \$ 2,715,619.00, instead of said \$ 3,800,000.00; and, second, in that the computation of the percentages shown by that certificate and representing the differences between the basic allowances and the receipts itemized in Section 11, had not taken into the consideration the assessed valuations shown by the special tax roll required by Section 97-403 of the 1929 Compilation.

Section 11 of Chapter 66 of the Laws of 1935 required that the assessed valuation {*36} of each county be taken into consideration in determining those percentages, including the assessments in the special tax roll above referred to, and was so interpreted by your department, as I am informed, for the first two years after the Act was passed; but was later interpreted by your department as not including the assessments on those special tax rolls.

I cannot, of course, pass upon the figures given in your letter of April 16 as representing the difference between the basic allowances and the items of receipts enumerated in said Section 11, but I presume they are correct. They correspond exactly with those made by Dr. Sanchez in his investigation as to the proper distribution of these funds, with the possible exception of the figures for counties having such special tax rolls.

The main error in the certificate was the substitution of the total estimated equalization fund receipts for the differences between the basic allowances and the items enumerated in said Section 11. That is now corrected. But the figures used are still in error in that the assessed valuation shown by the special tax roll under Section 97-403, 1929 Compilation, is still not taken into consideration in any manner. That section remains the same as it was in the 1935 law, except that only one-half of the assessed valuation in the special tax roll above referred to is to be taken into consideration.

Assuming that there was a doubt as to the proper interpretation of said Section 11 of the 1935 Act with respect to the assessed valuations in said special tax rolls, there could not be any since the passage of the new Act, and, from that time on, the amounts plainly required should be determined, and the distribution of the balance of the money governed thereby. Even now it is not too late. There is still time to adjust the matter from the proceeds received during April, May and June. This letter or certificate of April 16 fails to do that.

With this exception I believe that this certificate substantially corrects the old certificate and makes it possible for the Treasurer to comply with the statutes. This, of course, assumes the correctness of the figures which you used in every instance as representing the items listed in said Section 11 of the 1935 Act (now Section 10 of the new Act) and about which I, of course, have no information.

By: A. M. FERNANDEZ,

Asst. Atty. Gen.