

Opinion No. 39-3296

October 6, 1939

BY: FILO M. SEDILLO, Attorney General

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

{*112} In your letter of October 3 you inquire whether a board of education may insure its school property with an inter-insurance, reciprocal or mutual company.

Article IX, Section 14, of the New Mexico Constitution provides as follows:

"Sec. 14. Neither the state, nor any county, school district, or municipality, except as otherwise provided in this constitution, shall directly or indirectly lend or pledge its credit, or make any donation to or in aid of any person, association or public or private corporation, or in aid of any private enterprise for the construction of any railroad; provided, nothing herein shall be construed to prohibit the state or any county or municipality from making provisions for the care and maintenance of sick and indigent persons."

The test of whether a board of education may insure its property with any insurance company depends on whether or not the liability of the board to pay premiums or other assessments thereunder is limited or unlimited in amount.

If the contingent liability of the school board, if any under the policy, is limited in amount, then the constitutional provision supra, is not violated, but if the contingent liability is unlimited in amount then the constitutional provision above referred would be violated. See Attorney General's Opinion No. 1214.

See also McMahon vs. Cooney, 25 P. (2) 131 95 Mont. 138; Burton vs. School District (Wyoming), 38 Pac. 2nd 610; Johnson vs. School District, 128 Ore. 9, 273 Pac 764; School District vs. Insurance Company, 30 Idaho 400, 164 Pac. 1174; Downing vs. School District, 297 Pa. 474, 147 Atl. 239, and French vs. Millville, 66 N.J. 392, 49 Atl. 465.

It will be up to each school board to ascertain from the proposed policy whether or not the liability of the board under the policy is or is not ascertainable from the face thereof, and if the liability of the {*113} board is ascertainable the board may properly insure its property thereunder.

FRED J. FEDERICI,

Asst. Atty. Gen.