

Opinion No. 43-4273

April 22, 1943

BY: EDWARD P. CHASE, Attorney General

TO: Mr. R. H. Grissom, Educational Budget Auditor Office of State Comptroller, Santa Fe, New Mexico

We have your letter of April 19, 1943, in which you request an official opinion of this office concerning a correct method of computing the per capita cost relative to the amounts that may be assessed against one School District as a result of such School District sending their children to a School in another District.

It is noted that the only statutory provision directly pertaining to this problem is Section 55-604 (10) of the New Mexico 1941 Compilation which provides:

"Tuition for pupils attending schools in other districts (shall not exceed direct charge per capita cost in district where pupils are attending.)"

It would seem under this provision that the per capita cost can only be computed according to the Direct Charge Budget and that the per capita cost should be determined according to the budget for the current year and the estimated average daily attendance. Furthermore, it is my opinion that if expenditures under a particular budget are based on a 6-6 school plan, that in order to properly compute the accurate per capita cost the same plan should be followed in determining the average daily attendance as is used in computing the expenditures in order to accurately determine the proper per capita cost.

Under our statutes the particular formula, which must be followed in determining per capita cost is not set out. Therefore, it is my opinion that the Legislature contemplated giving the Educational Budget Auditor discretion in this matter under which the Educational Budget Auditor can set up any formula he sees fit that can reasonably be expected to accurately determine actual per capita cost under Section 55-604 (10). What would be a workable and proper formula for one School District may not necessarily give an accurate result under the particular conditions of another School District.

You state that there is a practice of certain schools to build up a cash surplus in their Direct Charge Fund from year to year and when they have finally accumulated a sufficiently large surplus to use such amounts for the building of buildings, etc. In view of such a situation you request an opinion concerning whether or not expenditures of such surpluses should be considered in determining per capita costs.

In my opinion, when such surpluses are used they cannot be considered in arriving at a per capita cost because such funds are accumulated from year to year in the Direct

Charge Budget and in such years would have already been properly utilized in arriving at the per capita cost under the Direct Charge Budget. If such amounts once accumulated are used for a building program, to once more consider such figures in determining the per capita cost to form the basis of tax assessments against a particular district would, in effect, result in a double levy. Therefore, in my opinion the expenditures of funds which are derived from a cash surplus which originates from a surplus of a direct charge budget cannot be considered in determining a per capita cost.

Hoping that the above fully answers your questions, I remain

By HARRY L. BIGBEE,

Asst. Atty. General