

**Opinion No. 46-4921**

July 3, 1946

**BY:** C. C. McCULLOH, Attorney General

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

{\*246} In your letter dated July 2, 1946, you inquire whether attorney's fees should be paid out of the Direct Charge or the Maintenance Fund, by a Board of Education against whom a suit has been filed, and which makes it necessary to employ the services of such an attorney.

In the case of Neal v. Board of Education, 40 N.M. 13, the Board employed the services of an attorney to represent it in a pending suit, and thereafter the attorney brought a suit for his fees against the Board. One of the questions raised was whether the attorney's fees should be paid out of the Direct Charge Fund, rather than from the Maintenance Fund.

The Supreme Court held that such expenditures are a part of the administrative expense, and should be so budgeted. Since the administrative expense is a part of the maintenance fund, it is apparent that attorney's fees may be paid from such fund.