

## Opinion No. 51-5468

December 21, 1951

**BY:** JOE L. MARTINEZ, Attorney General

**TO:** Hon. Daniel H. Taichert President, Board of Regents New Mexico School for the Deaf 1060 Cerrillos Road Santa Fe, New Mexico

{\*178} On December 20, 1951, we received copies of your letters dated October 17, 1951, but which were never received by this office. You requested an opinion from this office on certain questions concerning Chap. 190, New Mexico Session Laws of 1951.

You first question that Chap. 190, Laws of 1951, purports to give the new Board created by such Act the final voice in the determination of whether a budget submitted by the Board of Regents for the School for the Deaf shall or shall not be approved. You contend that this is an unconstitutional delegation of the powers of the legislation to the new Board.

It is our opinion that this delegation of powers to the new Board by the Legislature is not unconstitutional because what the Legislature has given, it can take away.

You next question that Chap. 190, Laws of 1951, as drawn, purports to confer power on the new Board to regulate and limit the control and management of the School by its Board of Regents through the attempted conferring on the new Board of the powers to 'adjust and approve' the budget submitted by the Board of Regents. You construe this wording to mean that the new Board could dictate to the Board of Regents of the School for the Deaf what the activities of the school should be and that it would therefore infringe on the powers of the Board of Regents as conferred by the Constitution of the State of New Mexico.

This is not the construction placed by this office on the meaning of the words 'adjust and approve'. It is our opinion that the words 'adjust and approve' are not dictatorial words but words which mean that the new Board shall have the power to 'adjust and approve' the budget within reason and can only adjust and approve the budget insofar as the direct appropriation from the Legislature is concerned and not upon any monies derived from lands placed in trust of the Board of Regents for the School for the Deaf.

Your last question is specifically with reference to the payment of the charge now attempted to be imposed on the school, it is suggested that funds derived by the school, from sources other than appropriations made by the Legislature, are funds beyond the control of the new Board, or the Legislature itself. As to funds received through appropriation, they have been allowed solely to meet the budget requirements of the school. No allowance was made in the 'miscellaneous' item in the school's budget for the 40th fiscal year for the expenditure of the amount demanded, and the funds budgeted in the 'Miscellaneous' item are needed for expenditures other than {\*179} the

one demanded by the Board of Educational Finance, and there is no surplus out of which payment of the amount demanded could now be made without drawing on funds specifically allocated to and approved for other purposes.

It is our opinion that funds derived by the school from sources other than appropriations made by the Legislature are funds beyond the control of the new Board or the Legislature itself and that these funds derived by the Deaf School from sources other than by appropriation from the Legislature cannot be touched by the new Board and no deduction can be made by the new Board from these funds for their administrative expenses. However, I believe that the Legislature can compel the Board of Regents for the School for the Deaf to contribute the amount provided for in Chap. 190, Session Laws of 1951, out of monies appropriated by the Legislature for the reason that it is a rule of construction of statutes that the new statute not only supersedes the old law but is the law that governs as being the last intention and directive of the Legislature.

As to my reasoning as to why the new Board cannot touch the trust funds of the School for the Deaf, I cite Section 10 of the Enabling Act:

"Sec. 10. -- It is hereby declared that all lands hereby granted, including those which, having been heretofore granted to the said territory, are hereby expressly transferred and confirmed to the said state, shall be by the said state **held in trust**, to be disposed of in whole or in part only in manner as herein provided **and for the several objects specified** in the respective granting and confirmatory provisions, and that the natural products and money proceeds of any of said lands shall be subject to the same trusts as the lands producing the same.

"Disposition of any of said lands, or of any money or thing of value directly or indirectly derived therefrom, **for any object other than that** for which such particular lands, or the lands from which such money or thing of value shall have been derived, were granted or confirmed, **or in any manner contrary to the provisions** of this act, shall be deemed a breach of trust; \* \* \*

"A separate fund shall be established for each of the several objects for which the said grants are hereby made or confirmed, and whenever any moneys shall be in any manner derived from any of said land the same shall be deposited by the state treasurer in the fund corresponding to the grant under which the particular land producing such moneys were by this act conveyed or confirmed. No moneys shall ever be taken from one fund for deposit in any other, **or for any object other than that** for which the land producing the same was granted or confirmed. \* \* \*

"It shall be the duty of the attorney-general of the United States to prosecute in the name of the United States and its courts such proceedings at law or in equity as may from time to time be necessary and appropriate to enforce the provisions hereof relative to the application and disposition of the said lands and the products thereof and the funds derived therefrom.

"Nothing herein contained shall be taken as in limitation of the power of the state or of any citizen thereof to enforce the provisions of this act; \* \*."

Trusting that this fully answers your inquiry, I remain