

## Opinion No. 57-326

December 18, 1957

**BY:** OPINION OF FRED M. STANDLEY, Attorney General Robert F. Pyatt, Assistant Attorney General

**TO:** Mr. K. D. Spiller, Chief, State Budget Division, Department of Finance and Administration, Santa Fe, New Mexico

### QUESTION

#### QUESTIONS

1. In keeping with the provisions of Section 7, Chapter 197, may a separate Administrative Fund be established for the Educational Retirement Board?
2. In the event that such an Administrative Fund is found to be in keeping with the Law, does Section 15, Chapter 197, make mandatory such a transfer by formal voucher initiated by the Educational Retirement Board?

#### CONCLUSIONS

1. Yes, for accounting purposes.
2. No.

### OPINION

#### ANALYSIS

Laws 1957, Chapter 197, § 7, compiled as § 73-12-40, N.M.S.A., 1953 Compilation, 1957 Supp., bears upon your first question, and in part provides:

"The salaries, fees or charges of all employees of the board, the expense of board meetings and all other necessary expense shall be as fixed by the board, unless otherwise provided, **and shall be paid out of the fund.**" (Emphasis ours)

While the statute requires payment of necessary expenses out of the fund (meaning the educational retirement fund, § 73-12-35 P, N.M.S.A., 1953 Compilation, 1957 Supp.), we believe it would nevertheless be permissible to effect an administrative "fund" or "account" for accounting purposes, subject to the appropriations specified in Laws 1957, Ch. 235, § 5, page 570. However, the duties of the members of the educational retirement board, as to being trustees of the fund, § 73-12-46, N.M.S.A., 1953 Compilation, 1957 Supp., would still obtain relative to the administrative "fund" or "account". We know of no objection to your proposal, in effecting the administrative

"fund" or "account" in following the 1/12th procedure suggested in your request letter, although we entertain some doubts as to the efficacy of this regulation.

§ 73-12-48, N.M.S.A., 1953 Compilation, 1957 Supp. enacted as Laws 1957, Ch. 197, § 15, was cited by you in regard to your second question. The same provides:

"Disbursement from the fund shall be made in the manner in which other state funds are disbursed, upon vouchers issued by the director authorized by resolution of the board.

"All disbursements from the fund shall be made by the state treasurer directly to the person entitled to receive them."

We do not believe your proposal contemplates "disbursements" within the meaning of this section, since the administrative "fund" or "account" will be effected solely for accounting purposes. Needless to say however, the payment of an employee's salary, or the payment of other administrative expenses, as examples, would have to be consistent with § 73-12-48, supra, since in legal contemplation the administrative "fund" or "account" will remain part of the educational retirement fund until lawfully disbursed.