

Opinion No. 58-181

September 10, 1958

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

TO: Mr. William W. Gilbert, Chairman, State Board of Educational Finance, Santa Fe, New Mexico

QUESTION

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"May the Board of Educational Finance assuming appropriate budgetary proceedings first followed, pay out of its appropriation for 'other operating expense' the cost of bringing qualified, possible candidates for its Executive Secretarial to New Mexico for interview and negotiations?"

CONCLUSION

Yes.

OPINION

ANALYSIS

There are two theories which we believe justify the conclusion above reached.

First, we believe the expenditures in question in this instance, can be justified as payment for professional services rendered the Board. The applicant in question, during the course of his interview, rendered his opinion and advice, together with an analysis, of what the Board might do to improve higher education in New Mexico. This office is neither qualified nor authorized to evaluate the services rendered by the applicant to the Board. Judging from a copy of certain parts of the applicant's opinion, some services were rendered. We cannot place a value on them. Rather, that would seem to be a discretionary matter vested in the Board, and except in cases clearly unreasonable, this office should not seek to substitute its views for those of the Board.

In the second place, § 73-29-17 requires the Board to appoint an executive secretary. He must be an experienced educator ". . . of demonstrated competence . . .". Obviously, the statute does not permit the Board to appoint anyone. Careful selection must be made. We believe the cost of locating and interviewing candidates for this position is proper as a Board function toward discharging its duty of appointing an executive secretary who meets the requirements of the statute.

In short, we believe these costs may be paid from the Board's line item appropriation for "other operating expense", Laws 1957, Chapter 235, § 2, page 551. In so holding however, we do not overrule Opinion of the Attorney General No. 57-202, rendered August 15, 1957. There, we were asked if job applicants could be paid travel expense from appropriations for that purpose. Because of the restrictive language of Laws 1957, Chapter 235, § 9A, we held this could not be done. Our opinion was restricted to the question asked, that being the practice of this office. The instant situation is different.