

Opinion No. 60-123

June 27, 1960

BY: OPINION of HILTON A. DICKSON, JR., Attorney General

TO: Mr. Tom Wiley Superintendent of Public Instruction Department of Education Santa Fe, New Mexico

QUESTION

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May the State Board of Education determine that an emergency exists in Mora County as a result of the recent decision in **Trujillo et al. v. State ex rel. Gandert**, and order funds transferred from the Emergency Fund of the Supplement Assistance Fund for distribution to the Mora County School Board for the purpose of paying a school superintendent's salary owing to Mrs. Gandert?

CONCLUSION

No.

OPINION

{*497} ANALYSIS

The Supreme Court of New Mexico in the case of **Trujillo et al. v. State ex rel. Gandert**, Sup. Ct. No. 6652, in a decision, dated April 27, 1960, affirmed a district court decision declaring that the attempted creation of Mora County Independent Rural School District No. 1 was contrary to law and that such school district was void. The judgment of the district court was filed October 14, 1959. The district court's judgment further ordered that Amadeo Aragon, the superintendent of schools of the void independent school district, pay any fees and emoluments of office paid to him to Mrs. Gandert.

Your question is whether the {*498} Emergency Fund of the Supplemental Assistance Fund established by Sec. 73-7-48, N.M.S.A., 1953 Comp. (PS), may be used to pay the salary of Mrs. Gandert, the legally constituted superintendent of schools during the time the independent rural school district purportedly existed, instead of requiring Mrs. Gandert to proceed against Mr. Aragon under the judgment.

There is no New Mexico case law interpreting the provisions of Sec. 73-7-47, N.M.S.A., 1953 Comp. (PS), creating a Supplementary Assistance Fund from Public School Equalization moneys and Sec. 73-7-48 creating a reserve emergency fund out of the Assistance Fund to be distributed on emergencies as determined by the State Board of

Education. However, this office has ruled in Opinion No. 59-217, dated December 30, 1959, that the State Board of Education could not by declaring an emergency transfer such moneys to pay for attorney's fees, filing fees and transcript costs incident to the Mora County School litigation which ended in the decision in the Gandert case.

Our opinion is that the State Board of Education cannot, by declaring an emergency, transfer moneys from the Emergency Fund created out of the Supplementary Assistance Fund in order to pay the salary owing to Mrs. Gandert, as school superintendent, during the time when the Mora Independent Rural School District had a purported but later declared void existence. As we stated in Opinion No. 59-217, the State Board of Education has the power under Sec. 73-7-48 to declare an emergency and transfer up to \$ 100,000.00 to be used for the purposes declared by the Board. However, the emergency must of necessity be one for which payment from the Supplementary Assistance Fund may legally be made and under Sec. 73-7-47, the Fund can only be used for the purpose of providing supplemental assistance to those counties not able through the regular distribution of the Public School Equalization Fund and their own maximum efforts to meet standards approved by the State Board of Education. We do not see where the payment of Mrs. Gandert's salary, as superintendent of schools, has any reasonable connection with the meeting of a standard approved by the State Board of Education. We conclude that declaration of an emergency for this purpose would be subversive of the purpose of the law and cannot properly be made.

Mrs. Gandert has a right in accordance with the judgment of the district court as affirmed to collect such amounts from Mr. Aragon. In connection with this right, an appeal bond was filed with the appeal of the district court's decision and Mrs. Gandert has the right to proceed against the sureties on this bond to collect all amounts due to her.

By: Philip R. Ashby

Assistant Attorney General