

## **Opinion No. 64-51**

April 13, 1964

**BY:** OPINION OF EARL E. HARTLEY, Attorney General Jerry Wertheim, Assistant Attorney General

**TO:** Dorothy J. Watkins, State Librarian, Box 1629 Santa Fe, New Mexico

### **QUESTION**

#### QUESTIONS

1. Does § 203 of Pub. L. No. 269, 88th Cong. 2d Sess. (Feb. 11, 1964), entitled Library Services and Construction Act, conflict with § 4-11-6, N.M.S.A., 1953 Compilation (P.S.), in the requirement that the New Mexico State Library Commission have certain authority to qualify the New Mexico plan for construction of libraries under § 203 of the Library Services and Construction Act?
2. Does § 130.39 (h) of the proposed regulations to the Library Services and Construction Act requiring supervision by the New Mexico State Library Commission of activities conducted by locally controlled public libraries under a plan conflict with § 4-11-6, N.M.S.A., 1953 Compilation (P.S.)?
3. Can the above conflicts be resolved through contracts between the New Mexico State Library Commission and local public libraries which may be involved in the New Mexico plan for construction under the Library Services and Construction Act?

#### CONCLUSIONS

1. Yes, as explained in Analysis.
2. Yes.
3. Yes.

### **OPINION**

#### ANALYSIS

Section 4-11-3 (D), N.M.S.A., 1953 Compilation (P.S.), provides that:

"The New Mexico State library commission shall: Administer grants-in aid and encourage local library service and generally promote an effective state-wide library system."

This section is limited in its effect by § 4-11-6, N.M.S.A., 1953 Compilation (P.S.), which provides that:

"The provisions of this act **shall not divest** any state, county, municipal, or other governing board or agency **of its control and supervision** of any library under its jurisdiction, except as the provisions of this act apply to the control and management of the state library." (Emphasis added).

To receive allotments from the Federal government under the Library Services and Construction Act, a state must have a plan for construction of public libraries approved by the United States Commissioner of Education. Approval of this plan requires compliance with § 203 of the above Act, providing that the criteria of paragraphs (1), (2), (4) and (5) of section 103 (a) be met. These are the same as paragraphs (1), (2), (4) and (5) of 20 U.S.C.A. § 354 (1961). Paragraph (1) of § 354, provides in pertinent part that the state library administrative agency "will have adequate authority under State law to administer the plan in accordance with its provisions and the provisions of this chapter." The language of this section can give rise to a direct conflict with § 4-11-6, N.M.S.A., 1953 Compilation (P.S.), if the New Mexico State library commission attempts to meet some of the further requirements of § 203 of the Library Services and Construction Act.

Twenty U.S.C.A. § 354 (5) requires that any library services furnished under the state plan be made available free of charge under regulations prescribed by the state library administrative agency. Moreover § 203 (4) of the Library Services and Construction Act requires assurance that all laborers and mechanics employed by contractors or subcontractors on all construction projects assisted under that act be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act as amended; that all laborers and mechanics receive overtime compensation in accordance with the provisions of the Contract Work Hours Standard Act; that the contractors or subcontractors submit to the labor standards established by the Secretary of Labor in accordance with the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 and Section 2 of the Act of June 13, 1934, as amended. If the boards or agencies having control or supervision of the local public libraries of New Mexico have a different policy in the above areas of supervision, then the New Mexico State Library Commission would be precluded by § 4-11-6, N.M.S.A., 1953 Compilation (P.S.), from requiring a different policy so as to conform to the requirements of § 203 of the Library Services and Construction Act. Therefore the answer to the first question posed above must be that § 4-11-6, N.M.S.A., 1953 Compilation (P.S.), is in conflict with the requirements of § 203 (a) of the Library Services and Construction Act if the boards or agencies which control the local public libraries of New Mexico have a different policy of supervision than that required by the Library Services and Construction Act.

The second question must likewise be answered yes. Section 130.3 (b) of the proposed regulations states:

"To the extent that locally controlled public libraries participate in such a plan for services or construction, their administration of activities provided for under such a plan must be under the supervision of the State agency."

This proposed regulation would require authority on the part of the New Mexico State Library Commission in excess of the limitation expressly defined by § 4-11-6, N.M.S.A., 1953 Compilation (P.S.). Therefore, without more, the New Mexico State Library Commission would be unable to comply with the proposed regulation.

The conflicts between § 4-11-6, N.M.S.A., 1953 Compilation (P.S.) and § 203 of the Library Services and Construction Act and § 130.3 (b) of the proposed regulations to this act can be resolved by a contractual arrangement between the New Mexico State Library Commission and the local public libraries which may be involved under the Library Services and Construction Act whereby the local public libraries agree to divest themselves of control and supervision to the extent that the New Mexico plan may be approved under § 203 of the Library Services and Construction Act. This divestiture of control and supervision by the local public libraries would result from the contract rather than the provisions of §§ 4-11-1 to 11, N.M.S.A., 1953 Compilation (P.S.). Therefore the New Mexico State Library Commission would not violate § 4-11-6, N.M.S.A., 1953 Compilation (P.S.), in qualifying New Mexico for allotments under the Library Services and Construction Act.