

Opinion No. 76-27

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BY: OPINION OF TONEY ANAYA, Attorney General Jill Z. Cooper, Assistant Attorney General

TO: Harry Wugalter, Chief, Public School Finance, Capitol Building, Santa Fe, New Mexico 87503

QUESTIONS

Question

Is it legal for a local Board of Education to pay for the individual dues of employees who voluntarily elect to be members of the National Education Association of New Mexico, American Federation of Teachers, Classroom Teachers Association or any other teacher/education association that is deemed appropriate by those who desire to join?

Conclusion

See Analysis.

OPINION

{*100} Analysis

The payment of dues for individual employees of a public school district would be illegal only if such payment were in violation of Article 9, Section 14 of the New Mexico Constitution. We find no other constitutional or statutory provision which would prohibit such an expenditure.

Article 9, Section 14 provides that:

Neither the state, or any county, school district, or municipality, except as otherwise provided in this constitution, shall directly or indirectly lend or pledge its credit or make any donation to or in aid of any person, association or public or private corporation. . . .

This office has already concluded, in response to a related question, that dues payments made on behalf of schools to a private association do not constitute a donation to the association in violation of Article IX, Section 14 when some benefit accrues to the school in consideration for such payment. In Opinion of the Attorney General No. 63-5, dated January 29, 1963, we recognized that:

[a] public school of this state may lawfully expend public monies in a reasonable amount for the purpose of payment of membership dues to an association or organization

having for its stated and actual purposes the providing of direct assistance and aid to affect the betterment of local education and the rendering of service and actual benefits to such schools in the advancement of public education and as long as such expenditures are in the best interest of the individual school concerned.

The particular question here, however, is not concerned with membership dues as a donation to a private association, but rather with such payments, on behalf of individual employees, as illegal donations to the individuals.

In **Nohl v. Board of Education**, 27 N.M. 232, 199 P. 373 (1921), the court held that the payment of insurance premiums by a local school board on behalf of individual employees was not an improper appropriation of public funds because "the securing of group insurance for teachers enables the board of education to procure a better class of teachers, and prevents frequent changes in the teaching force. This is certainly desirable and conducive to the 'proper conduct of the public schools'." 27 N.M. at 236. The court further explained that "[i]t is clear that the courts should not interfere with the discretion intrusted to boards of education under the statute, unless it plainly appears that there has been a gross abuse of such discretion and that funds are being spent for purposes and objects which have no relation to the public schools." 27 N.M. at 237. The question in **Nohl** was essentially whether, within the statutory authority of the school board, the expenditure was connected with the proper conduct of the schools.

The statutory authority of local boards as defined in Section 77-4-2, NMSA, 1953 Comp., provides that local boards have the power to supervise and control the public schools subject to the regulations of the state board. So long as no state board regulation prohibits dues payments for individual employees, the discretion to do so in {*101} the exercise of the control and supervision of schools remains with the local boards.

Section 77-4-2, **supra**, also gives the local boards the power to fix the salaries of employees. A local board could, therefore, subject to the Public School Finance Act, Sections 77-6-1 to 77-6-46, NMSA, 1953 Comp., elect to pay membership dues for individual employees as a form of compensation. The board is required, under Section 77-6-9, **supra**, to comply with the manual of budgeting and accounting of the Public School Finance Division of the Department of Finance and Administration but that manual does not restrict the form of compensation to be paid to public school employees. Moreover, the budget of the local board must, pursuant to Section 77-6-11, **supra**, be fixed in conjunction with the chief of Public School Finance, and, pursuant to Section 77-6-12, **supra**, be finally approved by the Division of Public School Finance. Thus, if a school board wished to pay individual membership dues, as compensation or otherwise, such an expenditure would have to be approved.

The Supreme Court of New Mexico has held that a payment is a "donation" in violation of Article IX, Section 14, when it is, in the ordinary sense, "a gift, an allocation or appropriation of something of value **without consideration.**" **Village of Deming v. Hosdreg**, 62 N.M. 18, 303 P.2d 920 (1956). (Emphasis added). Payments on behalf of

individuals made in consideration of some benefit which would accrue to the state are not necessarily prohibited by Article IX, Section 14. See Opinion of the Attorney General No. 63-126, dated September 23, 1963, and Opinion of the Attorney General No. 72-67, dated December 4, 1972.

It would seem, therefore, that within the bounds of state board regulations and the requirements of the Public School Finance Act, a local board could, without violating Article IX, Section 14, make membership dues payments on behalf of individual employees if the local board determined that such payment would benefit the schools under their supervision and control.