

Opinion No. 31-17

January 20, 1931

BY: E. K. Neumann, Attorney General

TO: Hon. J. M. Lujan, State Comptroller, Santa Fe, New Mexico.

{*25} This is in reply to your letter of the 19th instant, wherein you ask whether or not the Comptroller has the right to authorize transfers within the maintenance Fund of the various school districts, both independent and otherwise.

In my opinion the Comptroller has no such right. By Section 134-513 of the Code, the Comptroller is given the right to make transfers from one budget item to another, upon the request made by the State Tax Commission, approved by the Attorney General, when such request is made by the school, etc., board having control of the expenditure of such money, but such right, is limited to such cases where there is no prohibition by existing law.

This limitation requires us to look at Section 120-603 of the Code, wherein it is provided that transfers of funds within the maintenance division of school budget allowances, may be made by the governing board with the consent of the educational budget auditor, providing, however, that the emergency fund shall not be transferred except as the State Tax Commission shall direct and expended only with the approval of said commission.

To my mind, this is clearly in conflict with Section 134-513 and denies the Comptroller the right to authorize the transfer of such funds, leaving this matter in the hands of the governing board and the educational budget auditor, subject only to the direction of the State Tax Commission in case the emergency fund is involved.

This provision, to my mind, refers to the several classes of school districts.