

Opinion No. 39-3149

May 26, 1939

BY: FILO M. SEDILLO, Attorney General

TO: Mr. Rex French, State Treasurer, Santa Fe, New Mexico.

{*53} In your request of May 25, 1939, you state that you have on hand \$ 74,232.68, being the balance from the Equalization Fund necessary to make the \$ 2,715,619.00 distribution under the certificate issued by the State School Budget Auditor and the State Superintendent of Public Instruction, and which you state are being withheld by reason of the fact that the total amount required to be distributed would be reduced by that amount if the assessed valuation of all lands in certain counties are taken into consideration in determining the credits allowable as pointed out in my opinion of April 18, 1939, addressed to Mr. Grissom.

You inquire whether this amount should be withheld for the purpose of distribution as a part of the Equalization Fund distributable under the second certificate required by the law to be made with respect to equalization deficiency.

The counties which did take credit for the full assessed valuation as required by the law are entitled to the full amount of money called for by the certificate first filed, and their pro rata share of the amount on hand should be distributed without delay. If any of these monies are to be withheld, they are to be withheld only from the counties which are subject to reduction with respect to this first distribution by reason of the facts stated in my former opinion. You are familiar with the counties in question and with the amount of assessed valuation disregarded in making the certificate.

As to those counties which had more money assigned than the law contemplated, there is a question as to which law governs -- the law requiring credit for a 90% collection on a five-mill levy upon the full assessed valuation, or the new law requiring only 50%. As suggested to you at the conference with the State Budget Auditor the other morning, where counties have more than enough money coming to make the difference, it would be better if only 50% of the monies were withheld at this time. The balance may be withheld from the last distribution if in the meantime the matter has not been satisfactorily determined as being governed by the 50% provision of the new law.

By: A. M. FERNANDEZ,

Asst. Atty. Gen.