

Opinion No. 44-4440

January 20, 1944

BY: EDWARD P. CHASE, Attorney General

TO: Mr. Romeo A. Ortiz, Superintendent of Schools, Sandoval County, Bernalillo, New Mexico

We are in receipt of your letter of January 7, 1944, in which you state that you have a balance of approximately \$ 3,900.00 in your emergency fund, and approximately \$ 3,000.00 in your general emergency fund. In view of these facts, you ask whether or not a bonus may be granted to teachers employed in your schools or, in the alternative, whether or not an increase in salaries may be granted to such teachers.

Taking up the first phase of your question, as to whether or not a bonus may be allowed to the teachers, I presume that by the word "bonus" you mean the payment of a sum of money not called for in the teachers' contracts to be given as an additional emolument for services rendered. In this connection, your attention is directed to the following constitutional provisions which provide, in part, as follows:

Section 27, Article 4:

"No law shall be enacted giving any extra compensation to any public officer, servant, agent or contractor after services are rendered or contract made; nor shall the compensation of any officer be increased or diminished during his term of office, except as otherwise provided in this constitution."

Section 14, Article 9:

"Neither the state nor 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 * * *."

In view of these provisions, it is my opinion that a bonus cannot be given to any teacher, since the school district would be making a donation to a private person and giving extra compensation to a public servant after the services were rendered and the contract made. See State v. Trujillo, 46 N.M. 361.

While no additional compensation could be paid under the existing contracts, new contracts could be entered into with the teachers. If such new contracts were made, the necessary budget transfers would be governed by Section 7-120 of the 1941 Compilation which provides, in part, as follows:

"1. Whenever there shall arise in any county, municipality or school district of this state, an unforeseen emergency necessitating the expenditure of funds for a purpose not

provided for in the budget of such county, municipality or school district, and provided there be funds available to such county, municipality, or school district with which to meet such expenditure, the state comptroller shall have power in his discretion, with the written approval of the chief tax commissioner and of the Attorney General, to revise the budget of such county, municipality or school district in such manner as to authorize such expenditure, provided that such revision will not result in increasing the total of the budgets of all county, municipal, or school district funds, exclusive of interest and sinking funds, * * *."

In the light of this provision, the answer to your second phase of your inquiry depends mainly on whether or not an unforeseen emergency has arisen necessitating the increase in the teachers' salaries. It is noted that two conditions must exist before a budget transfer can be made. First, that an emergency exists necessitating such budget transfer, and second, that it was unforeseen at the time your budget was made up.

The decision of whether such transfer should be made is placed in the discretion of the State Comptroller, but his discretion is limited, since it only comes into being in the event that an unforeseen emergency exists. Thus, you would have to present evidence to him showing that an unforeseen emergency exists, and convince him that such transfer is necessary and proper under all the circumstances. You should also gain the approval of the State Educational Budget Auditor before any budget transfer is made.

Trusting that the foregoing fully answers your inquiry, I am

By ROBERT W. WARD,

Assistant Attorney General