

**OPINION**  
**47-106**

December 17, 1947            (OPINION)

EDUCATION

RE: Department of Public Instruction - Acceptance of Federal Funds

This office is in receipt of a letter written by your Mr. Quale on December 11, 1947, relative to a proposed contract with the office of Indian Affairs as one party and the State of North Dakota acting through your department as the other party regarding the distribution of federal funds to certain public schools in this state in which Indian pupils are in attendance.

You enclose copy of proposed contract which, as I understand, is identical with the form of contracts entered into by the Indian Affairs and other states of the United States.

As I understand, it has been the practice heretofore for the Federal government to distribute grants directly to each school having Indian pupils in attendance. Under the proposed plan the total amount of Federal funds to be distributed to such schools will be made directly to the Department of Public Instruction and by the Department distributed to the several schools, based upon the number of Indian pupils in attendance.

The advantages claimed for the proposed system are enumerated as follows:

1. Avoids confusion. All financial assistance to school districts goes through one channel, the state.
2. State has opportunity to make more efficient and effective use of the money. The established system of account, for the money flowing from the state to the school districts assures that the money is used as intended.
3. Prestige of the state is beneficial to the Indian children. Suggestions from the state Department of Public Instruction to school districts pertaining to the education and welfare of Indian children receive due respect and attention.
4. Requests to Congress from the state and political subdivisions thereof for increases in Federal appropriations for Indian tuition are quite effective and usually bear fruit.

I understand further that similar contracts have been entered into with the states of Minnesota, California, Oregon, Nevada, Washington, Arizona and Oklahoma and others and found to be both desirable and practical.

There will be no additional expense to the Department of Public Instruction as the Federal Government will furnish funds to cover the administrative and supervisory costs to the State Department,

including a state supervisor, clerical assistance, travel expense and office supplies.

The entering into such a contract with the Indian Affairs by the State through the Department of Public Instruction will not bring about any changes in the present system except that the funds granted by the Federal Government for the education of Indian children will be distributed by the Department of Public Instruction rather than by the Federal Government. This arrangement would apply only to state schools where Indian pupils are now in attendance.

In answering your questions, therefore, I beg to advise:

1. Since the state assumes no financial obligation and the Federal Government, under the present system, is furnishing funds for the education of Indian children, it is our opinion that the state would have authority to enter into such a contract, through the Department of Public Instruction.
2. Under the circumstances it would not be necessary for the Legislature to enact enabling legislation before such a contract could be entered into by the State and the Indian Affairs.
3. Since the schools eligible are legal schools of the school system of the State of North Dakota, the Indian children attending same would necessarily be included in the matter of distribution from the several branches of the State Equalization Fund.

NELS G. JOHNSON

Attorney General