

OPINION
47-107

May 19, 1947 (OPINION)

EDUCATION

RE: Department of Public Instruction Accepting Funds from
Anti-Tuberculosis Association

This is in reply to your letter of May 17, 1947, in which you ask the opinion of this office upon the following proposition: It is possible that your department will be able to secure funds from the North Dakota Anti-Tuberculosis Association for the salary, clerical assistance and mileage for a director of health, recreation, and physical education. The question is, may you legally accept funds from the association for such purpose?

This office gave an opinion to your department on August 13, 1946, on a similar question, written by Assistant Attorney, I. A. Acker. The question involved was whether your department could legally accept funds from the Anti-Tuberculosis Association to finance the administration of the federal lunch program up to March 1, 1947, as a gift or loan. After discussing the question, Mr. Acker made the following statement:

It is my opinion that you are authorized to accept the offered donation of \$5,000. from the Anti-Tuberculosis Association, and monetary donations from any other sources, pending action by the legislature. Although there is no statutory authority for your department to carry on the 'school lunch program' nevertheless, you may consent to do so. The state cannot in any manner be prejudiced thereby since no financial obligation or responsibility can be assumed by the state until the legislature has accepted the program and appropriated funds for its administration.

The Anti-Tuberculosis Association, and any other donor, must, of course, be given to understand that funds to carry on the program cannot be accepted as loans. Until and unless the legislature decides otherwise, moneys advanced for its administration must be regarded as outright donations, and not otherwise."

The health of the pupils of the state, recreation, and physical education, fit in with the education system of the state, and it is the opinion of this office that your department may accept the funds offered by the Anti-Tuberculosis Association and use the same for defraying the expenses of a director for health, recreation and physical education. Such acceptance, however, cannot obligate the state in any way, and your department would not have any authority to agree to a repayment of such funds. I understand, however, that a repayment is not contemplated but that it is the intention to make a donation to your department for the purposes referred to without any strings whatsoever.

NELS G. JOHNSON

Attorney General