

OPINION
57-89

December 31, 1957 (OPINION)

EDUCATION

RE: Basis of Need - Restrictions by Board

Your request for an opinion dated December seventeenth has been received.

You state that you have received a general fund proposed budget and a basis of need application from Lake School District No. 5, Devils Lake, North Dakota. This school district does not operate a school and resident pupils from this district are being educated in the Devils Lake schools.

You state that since the inception of the emergency aid laws, payments have been restricted to payment of salaries of teachers and janitors only, and even when so limited emergency appropriation was necessary during the last biennium in order to help all applicants.

Distribution of emergency or basis of need funds is carried out by the State Board of Public School Education and since such distribution always has and now is limited to the payment of teachers' and other salaries, you ask whether the board is legally correct in so limiting the distribution of this emergency aid.

It is interesting to note that the original law enacted in 1937 (Chapter 27, Sec. 4-i) provides that basis of need funds shall be used only to pay teachers' salaries. The Legislature in 1939 (Chapter 209, Sec. 4-d) amended the law to read that aid granted school districts from the emergency fund shall first be applied for the payment of teachers' salaries. This statute now appears as Section 15-4009 of the North Dakota Revised Code of 1943 and reads as follows:

Aid granted to school districts from the emergency fund shall be applied first to payment of teachers' salaries."

The change in language of the statute seems to indicated the Legislature intended that these grants from the emergency fund might be used for purposes other than payment of salaries. The law does not specify any other purpose and therefore the intent appears to have been to permit use of these funds for purposes other than payment of salaries if approved by the State Board of Public School Education.

In reading Chapter 15-40 it becomes obvious that the emergency help provided for therein on basis of need was intended to apply only to school districts that are operating one or more schools. For instance, section 15-4005 reads as follows:

EXPENDITURE OF EMERGENCY FUND: MINIMUM REQUIREMENT FOR SCHOOL OPERATING DETERMINED BY SUPERINTENDENT OF PUBLIC INSTRUCTION.

The superintendent of public instruction shall investigate and inquire into the general subject of public school costs and the needs of financially distressed districts in the state. He shall prepare the necessary application blanks and forms upon which the information required shall be certified by the school authorities designated by him. From the information acquired, the superintendent of public instruction shall determine from month to month the minimum amount of money required to operate each of the various classes of public schools." (Emphasis supplied)

Section 15-4006 provides as follows:

EXPENDITURE OF EMERGENCY FUND; CERTIFICATE OF NEEDY SCHOOLS TO STATE AUDITOR. From the information obtained in the manner set forth in section 15-4005, the superintendent of public instruction shall certify monthly to the state auditor a list of school districts which are unable to pay the minimum amount as determined in the manner set forth in section for the operation of their schools after having made the maximum financial effort to do so together with a statement of the amount of money required by such districts to meet such minimum standards." (Emphasis supplied)

Section 15-4007 reads in part as follows:

EXPENDITURE OF EMERGENCY FUND: MAXIMUM FINANCIAL EFFORT DEFINED; REQUIREMENTS. Before it shall be determined that a school district has made the maximum financial effort to pay for the operation of its schools it must appear: * * * "
(Emphasis supplied)

The entire law indicates that emergency help on basis of need is only available to school districts that have a school or schools in operation and it is, therefore, our opinion that Lake School District No. 5 of Devils Lake, North Dakota, is not entitled to aid from the emergency fund in this instance. We further believe that the State Board of Public School Education has the right to restrict aid from this fund for payment of salaries for teachers and other help only.

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Attorney General