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Federal Educational Funds: Distribution

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OPINIONS OF THE ATTORNEY GENERAL**FEDERAL EDUCATIONAL FUNDS: DISTRIBUTION**

December 17, 1947

Honorable G. B. Nordrum
Superintendent of Public Instruction
Bismarck, North Dakota

Dear Mr. Nordrum:

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 accounting 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 state 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 change 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.

Yours very truly,
 NELS G. JOHNSON
 Attorney General
 By P. O. SATHRE
 Assistant Attorney General

POS:L

“GENERAL” ELECTION

November 28, 1947

Mr. Myron H. Atkinson
 City Auditor
 City of Bismarck
 Bismarck, North Dakota

Dear Mr. Atkinson:

This will acknowledge your letter in which you ask whether Chapter 118 of the 1947 Session Laws, which is in the nature of a concurrent resolution providing for an amendment to the Constitution of the state of North Dakota permitting municipal liquor stores, should be submitted to the qualified electors of the state for approval or rejection at the state-wide primary election or at the next general election.

The specific question involved in your letter is whether the state-wide June primary election of 1948 is a general election. Section 124 of the North Dakota Constitution provides for general elections of the state to be held biennially on the first Tuesday after the first Monday in November. Chapter 118 of the 1947 Session Laws states “that the following amendment to the Constitution of the State of North Dakota is agreed to and shall be submitted to the qualified electors of the State of North Dakota for approval or rejection *at the next general election*, in accordance with the provisions of Section 202 of the Constitution of the State of North Dakota, as amended; * * *.”

Section 16-0601 of the North Dakota Revised Code of 1943 states:

“On the first Tuesday after the first Monday in November of each even numbered year, an election shall be held in the several election districts of this state, which shall be *known as the general election.*”

Section 16-0401 N.D.R.C. 1943 provides for a primary election. This is to be held on the last Tuesday of June in each year in which *a general election occurs.*

The statute further provides that this is “in lieu of party caucuses and conventions,” and that its purpose is the nomination of candidates for the following offices to be voted for “*at the ensuing general election.*” Then it goes on to enumerate the offices for which nominations are to be made.

In the case of *Walton v. Olson*, 40 N. D. 571, 170 N.W. 107, the Supreme Court held that the primary election provided by our law takes the place of the former nominating conventions.

A primary for the purpose merely of making nominations is *not an election* within the meaning of Section 47 of the State Constitution. *Leu v.*