

94

## EDUCATION, DEPARTMENT OF:

1. "STATE EDUCATIONAL AGENCY"—PUBLIC LAW 815, SECTION 210, PAR. 13, 81 CONGRESS.
2. SOLE STATE AGENCY DESIGNATED BY LEGISLATURE TO CARRY OUT PURPOSES STATED IN PUBLIC LAW 815, TITLE I, SECTION 101, 81 CONGRESS.
3. AUTHORIZED TO MAKE AND FILE APPLICATION FOR FEDERAL GRANTS OF FUNDS—SCHOOL FACILITIES—SURVEY—PUBLIC LAW 815, TITLE I, SECTION 101, 81 CONGRESS.
4. ANY FUNDS RECEIVED THROUGH APPLICATION FOR FEDERAL GRANT IN AID REQUIRED BY LAW TO BE PAID INTO STATE TREASURY.
5. TREASURER OF STATE—AUTHORIZED TO ACCEPT FEDERAL GRANTS OF FUNDS—PUBLIC LAW 815, TITLE I, SECTION 101, 81 CONGRESS—OFFICIAL CUSTODIAN—REQUIRED BY LAW TO DISBURSE FUNDS UPON PROPER VOUCHER OF DEPARTMENT OF EDUCATION.

## SYLLABUS:

1. The department of education of Ohio is a "state educational agency" as defined in paragraph 13, Section 210, Public Law 815, 81st Congress.
2. The department of education of Ohio is the sole state agency designated by the legislature to carry out the purposes stated in Section 101, Title I, Public Law 815, 81st Congress.
3. The department of education of Ohio is authorized to make and file application for federal grants of funds for the school facilities survey contemplated by Section 101, Title I, Public Law 815, 81st Congress.

4. Any funds which the department of education of Ohio receives as the result of an application for a federal grant in aid are required by law to be paid into the state treasury.

5. The treasurer of the state of Ohio is authorized to accept federal grants of funds made under Section 101, Title I, Public Law 815, 81st Congress, as official custodian thereof; and such officer is required by law to disburse such funds upon the proper voucher of the department of education of the state of Ohio.

Columbus, Ohio, February 7, 1951

Hon. Clyde Hisson, Superintendent of Public Instruction  
Department of Education, Columbus, Ohio

Dear Sir:

Your request for my opinion reads:

"Enclosed is a copy of Public Law No. 815 passed by the 81st National Congress, second session. As you will note, Title I of this law makes an appropriation to assist the several states in making an inventory of existing school facilities and in making a survey of the need for construction of additional school facilities. The amount allotted to Ohio for this purpose is \$142,450.

"Also enclosed is a copy of the application blank which the department of education has already filed with the U. S. Commissioner of Education. You will note on page 2 of the application blank that in order to secure the above mentioned allotment for Ohio it is necessary for us to submit to the U. S. Commissioner of Education the Attorney General's opinion covering the following points:

"1. That the Department of Education, State of Ohio, as defined as 'State Educational Agency' in paragraph 13, Section 210 P. L. 815 is the sole state agency in Ohio for carrying out the purposes of the law.

"2. That the Department of Education, State of Ohio, is authorized to receive and disburse these federal funds in accordance with the provisions of Public Law 815.

"The following is a copy of a part of Section 2 of H. B. 654 (the Appropriations Act), page 130, passed by the 98th General Assembly for this biennium ending July, 1951:

"All revenues received from the federal government by the State of Ohio, or any of its departments or divisions, and any receipts or any collections made for and on behalf of the United States government are hereby appropriated for the purpose for which allotted or collected.

“Any revenues received from the federal government for use by any local political subdivision of the State of Ohio are hereby appropriated for distribution to such subdivision, and the legislative authority of each such subdivision is authorized to appropriate the revenues so received for the purpose for which allotted.’

“This is the section under which the department of education is already receiving certain federal funds such as school lunch subsidies and we believe that it authorizes the department to receive the funds appropriated by Public Law 815.

“We will appreciate an early opinion covering these two points.”

With your letter you have supplied a copy of the application blank which the United States Commissioner of Education requires to be used in applying for the allocation of federal funds. Section III of this application reads as follows :

“III. (a) The .....  
(State educational agency  
named in Paragraph I)

is authorized to make and file application for Federal grants for the school facilities survey, and to carry out the purposes of Section 101, Title I, P. L. 815 ; it has been designated the sole State agency for carrying out the said purposes ; and it is the ‘State educational agency’ as defined in Paragraph (13), Section 210, P. L. 815.

“(b) The .....  
(State agency or official  
named in Paragraph II)

is authorized to receive Federal grants made under Title I, P. L. 815, as official custodian thereof, and will disburse the said funds upon the proper warrant or order of the State educational agency.

“(c) Opinion of the State Attorney General is attached showing existence of all of the authority and responsibility claimed in subparagraphs (a) and (b) by aforesaid State agencies or official.”

The statements required to be made by you in this application raise the following questions of law :

1. Is the department of education of the state of Ohio a “state educational agency” as defined in paragraph 13, Section 210, Public Law 815, 81st Congress?

2. Is the department of education of the state of Ohio authorized to carry out the purposes of Section 101, Title I, Public Law 815, 81st Congress?

3. Has the department of education of the state of Ohio been designated as the sole state agency for carrying out such purposes?

4. Is the department of education of the state of Ohio authorized to make and file applications for federal grants of funds for the purpose of making a school facilities survey within the meaning of Section 101, Title I, Public Law 815, 81st Congress?

5. What state agency or official, if any, is authorized to receive, as official custodian thereof, federal grants of funds made under Section 101, Title I, Public Law 815, 81st Congress; and is such agency or official required by law to disburse such funds upon the proper warrant or order of the department of education of the State of Ohio?

With respect to the first question above listed, the term "state educational agency" is defined in subparagraph 13, Section 210, Public Law 815, 81st Congress, as follows:

"(13) The term 'State educational agency' means the officer or agency primarily responsible for the State supervision of public elementary and secondary schools."

The office of superintendent of public instruction is one established by the constitution. Section 4, Article VI, Ohio Constitution. The duties of the superintendent of public instruction are now reposed in the department of education. In this connection, Section 154-3, General Code, reads in part as follows:

"The following administrative departments are created:  
\* \* \*

"The department of education, which shall be administered by the superintendent of public instruction, as director thereof;  
\* \* \*"

The duties of the superintendent of public instruction are stated in Sections 154-46c and 154-46d, General Code. These sections read as follows:

Section 154-46c:

"The superintendent of public instruction while holding such office shall not perform the duties of teacher or superintendent of a public or private school, or be employed as teacher in a college or hold any other office or position of employment. He may, in the conduct of his official duties travel within or without the state, and his necessary and actual expenses therefor when properly verified shall be paid by the state."

Section 154-46d:

“The superintendent of public instruction shall have such supervision of the school funds of the state as is necessary to secure their safety and distribution as provided by law. He may require of auditors and treasurers of counties, boards of education, teachers, clerks of such boards, and other local school officers, copies of all reports made by them in pursuance of law. He may also require of such officers any other information he deems proper in relation to the condition and management of schools and school funds.”

By reason of the foregoing statutory provisions, I have no difficulty in concluding that the department of education of Ohio is a “state educational agency” as defined in paragraph 13, Section 210, Public Law 815, 81st Congress.

With respect to the second question listed above, the purposes stated in Section 101, Title I, Public Law 815, 81st Congress, read as follows:

“In order to assist the several States to inventory existing school facilities, to survey the need for the construction of additional facilities in relation to the distribution of school population, to develop State plans for school construction programs, and to study the adequacy of State and local resources available to meet school facilities requirements, there is hereby authorized to be appropriated the sum of \$3,000,000, to remain available until expended. \* \* \*”

While there is no statutory provision conferring on the director of education the authority, in specific and precise terms, to make the contemplated survey, to develop a state school construction program, or to study the adequacy of state and local resources available to meet school facilities requirements, I am convinced that such authority is implied in the language employed in Section 154-46d of the General Code. It will be observed that the director of education (exercising the authority of the superintendent of public instruction) is empowered to exercise supervision over the school funds of the state, and this by its very nature necessitates a study of the adequacy of state and local resources available to meet school facilities requirements. In order to ascertain the school facilities requirements of the state is it obviously necessary for the director of education to survey, among other things, the existing school building facilities and to estimate the need for the construction of additional facilities in relation to the distribution of the school population. This he may

well do under the power conferred on him in Section 154-46d, authorizing him to require of certain named officers "any other information he deems proper in relation to the condition and management of schools and school funds."

While the director of education of the State of Ohio has no statutory authority to proceed with the actual construction of additional school facilities, the development of state plans for school construction programs is well within his statutory authority as a necessary corollary to the power to survey the need for additional construction facilities. Accordingly, I conclude that the department of education of the State of Ohio is authorized to carry out the purposes of Section 101, Title I, Public Law 815, 81st Congress.

With respect to the third question listed above, an examination of the pertinent statutes indicates that no other state agency has been given any statutory authority to make surveys, develop construction programs, or to study the adequacy of state and local resources, as has been conferred on the department of education; and I conclude, therefore, that the department of education of Ohio is the sole state agency which can be said to have been designated by the legislature to carry out the purposes stated in Section 101, Title I, Public Law 815, 81st Congress.

With respect to the fourth question listed above, your attention is invited to the following statement in Section 2 of House Bill No. 654, 98th General Assembly of Ohio, passed July 14, 1949, and approved by the governor July 15, 1949:

"All revenues received from the federal government by the state of Ohio, or any of its departments or divisions, and any receipts or any collections made for and on behalf of the United States government are hereby appropriated for the purpose for which allotted or collected."

It is apparent from this language that the General Assembly intended to make available for expenditure any funds received by way of federal grants or grants in aid by the recipient department or agency. The appropriation of such moneys by the legislature is indicative of a consent to and authorization for the acceptance by any such department or agency of funds which might be so granted. This in turn clearly implies a consent to and authorization for such department or agency to make application for such federal funds which might be available. In view of this blanket

authority, I conclude that the department of education of Ohio is authorized to make and file application for federal grants of funds for the school facilities survey contemplated by Section 101, Title I, Public Law 815, 81st Congress.

With respect to the fifth question, it is to be observed that all public moneys received by any of the several state departments, officers or agencies are required to be kept in the custody of the state treasurer of Ohio. In this connection Section 24, General Code, reads in part as follows:

“On or before Monday of each week every state officer, state institution, department, board, commission, college or university receiving state aid shall pay to the treasurer of state all moneys, checks and drafts received for the state, or for the use of any such state officer, state institution, department, board, commission, college or university receiving state aid, during the preceding week, from taxes, assessments, licenses, premiums, fees, penalties, fines, costs, sales, rentals or otherwise, \* \* \*.”

Under the provisions of this statute, therefore, any funds which the department of education of Ohio receives as the result of an application for a federal grant in aid are required by law to be paid into the state treasury.

As to the disbursement of funds from the state treasury, it is to be noted that under the provisions of Section 22, Article II, Ohio Constitution, no money shall be drawn from the state treasury except in pursuance of a specific appropriation made by law. This specific appropriation, as I have already noted, has been made in the general appropriation act for the current biennium by the blanket provision quoted above. While it is true that disbursements from the fund established in the state treasury by virtue of the deposit therein of money received by federal grant under authority of Public Law 815 could not be withdrawn or disbursed therefrom by the department of education without the approval of the department's vouchers by the director of finance and by the auditor of state, it is to be observed that the approval by these two officers is given by them in the exercise of a purely ministerial function designed to insure accuracy of accounts, and that neither of them possess any discretion, as does the department of education, as to what is a proper item of expense in the carrying out of the purposes stated in the federal statute by which this grant has been authorized.

Accordingly I conclude that the treasurer of the state of Ohio is authorized to accept federal grants of funds made under Title I, Public Law 815, Section 101, 81st Congress, as official custodian thereof; and that such officer is required by law to disburse such funds upon the proper voucher of the department of education of the State of Ohio.

Respectfully,

C. WILLIAM O'NEILL  
Attorney General