

MAINE STATE LEGISLATURE

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Yes ✓
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Kermit S. Nickerson, Deputy
Commissioner

Education

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Attorney General

Legality of Allotment of N.D.E.A. Funds by State to Superintending School Committee for Use in Purchase of Equipment for Private Academy.

FACTS:

The superintending school committee of the Town of Newcastle is making application to the State Department of Education for N.D.E.A. funds to be utilized for the purchase of certain equipment to be used at Lincoln Academy. Lincoln Academy is not operated by the town; and there is no joint committee existing between the academy and the town's superintending school committee pursuant to 29 M.R.S.A. § 1289.

The State Department of Education makes allocations of N.D.E.A. funds pursuant to a state plan promulgated under section 303 of Title III, P. L. 85-864, as amended, i.e., The National Defense Education Act.

The reference equipment (the ownership of which would ultimately rest in the academy) would be purchased by the Newcastle superintending school committee and would be financed at the rate of 50 per cent from N.D.E.A. funds and 50 per cent from monies provided to the town by the academy.

The National Defense Education Act requires, inter alia, that plans be submitted by those states wishing to receive payments under the Act. P. L. 85-864, Title III, Section 303, as amended in 1964 by P. L. 88-565. The reference section must meet several requirements, two of which are as follows:

"(1) sets forth a program under which funds paid to the State from its allotment under section 302 (a) will be expended solely for projects approved by the State educational agency for (A) acquisition of laboratory and other special equipment (other than supplies consumed in use), including audiovisual materials and equipment, and printed and published materials (other than textbooks), suitable for use in providing education in science, mathematics, history, civics, geography, modern foreign language, English or reading in public elementary or secondary schools, or both, and of testgrading equipment for such schools and specialized equipment for audiovisual libraries

serving such schools, and such equipment may, if there exists a critical need therefor in the judgment of local school authorities, be used when available and suitable in providing education in other subject matter, and (B) minor remodeling of laboratory or other space used for such materials or equipment.

* * * * *

"(5) sets forth a program under which funds paid to the State from its allotment under section 303 (b) will be expended solely for (A) expansion or improvement of supervisory or related services in public elementary and secondary schools in the fields of science, mathematics, history, civics, geography, modern foreign languages, English, and reading, and (B) administration of the State plan." (Emphasis supplied.)

The Act also provides for loans to non-profit private schools in Title III, section 305.

A reading of the entire State plan reveals that it is drawn to cover public elementary and secondary schools in the State.

QUESTION:

(Respectfully, the plural questions posed may be disposed of by answering the question presented below.)

Whether Newcastle's application for N.D.E.A. funds may be approved by the State Department of Education, in light of the given facts?

ANSWER:

No.

REASON:

The reference Act indicates clearly that State plans are to encompass public elementary or secondary schools. P. L. 85-864, Title III, Section 303, (a), (1) and (5). The fact that Congress enacted a specific provision regarding loans to non-profit private schools is a strong indication that the latter schools were not to participate in N.D.E.A. funds.

The existing State plan contains sufficient language indicating that the State Department of Education was to allocate Federal monies only to public elementary and secondary schools (recognizing the proviso regarding the reference loans already mentioned).

(For a related problem, see our opinion of February 12, 1952, addressed to your Department.)

John W. Benoit
Assistant Attorney General

JWB/eh