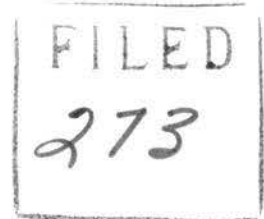


Federal-State Agreements:
Adult Education:

Approval of State Plan between State Board of Education and federal office of Education for Adult Basic Education Program, Title III, P.L. 89-750.

OPINION NO. 273
Answer by letter-DeFeo

May 5, 1967



State Board of Education
Attention: Mr. Bill Ghan, Director
Adult Basic Education
Jefferson Building
Jefferson City, Missouri

Re: State Plan under Adult Education Act of 1966

Gentlemen:

Per your request I have reviewed the State Plan for the Adult Basic Education program under the Adult Education Act of 1966 (Title III, P.L. 89-750), which plan was adopted by the State Board on March 31, 1967.

Section 1.22 of the State Plan places responsibility on the State Board for federal funds that are lost or diverted. I call to your attention the difficulty incurred under the Special Milk Program in connection with overclaims of the Warrenton School District. The practices in administering this program should include adequate safeguards to prevent any loss or diversion of funds. I recommend that this office review the form of agreement between the state and local agencies so that we might recommend appropriate provisions to protect the State Board and prevent loss or diversion of funds.

Section 1.75(b), of the State Plan, apparently has a typographical error in line 8.

The federal law, P.L. 89-750, Section 306(a), provides that the State Plan shall:

"(4) provide for grants to public and private nonprofit agencies for special projects, teacher-training and research;"

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The federal guidelines, Section 2.1, require description regarding such grants. Section 2.1 of the State Plan is limited to public school agencies and fails to provide for grants to other public agencies and to private nonprofit agencies. It also fails to provide for grants for teacher-training and research. I am unable to find any provision in the State Plan for grants as required by Section 306(a)(4) of the federal law. Therefore, the State Plan should be amended to conform with the federal requirements. Also you may desire to add specification on the subject of teacher-training and research.

Section 2.31 regarding grants to private nonprofit agencies is insufficient.

The State Constitutional provision which is directly responsive to the inquiry of the federal guidelines is Article III, Section 38(a). This section prohibits the grant of public money to any private person or organization. This section further provides:

"Money or property may also be received from the United States and be redistributed together with public money of this state for any public purpose designated by the United States."

This office has held in Opinion No. 100, Hearnest, 1-18-66, that the quoted provision authorizes the use of federal grants for the carrying out of the public purposes for which the federal government has designated that the money should be used.

Article VI, Section 23, prohibits political corporations and subdivisions (which would include school districts and state institutions of higher education) from using public monies in the aid of a private person or organization.

Neither Article III, Section 38(a), or Article IV, Section 23, place limitations upon federal funds. Public funds within the meaning of these provisions refers only to funds belonging to the state or a subdivision thereof raised by operation of some general law, State ex rel St. Louis Police Relief Ass'n v. Igoe, et al., 340 Mo. 1166, 107 S.W.2d 929, 933.

Also these constitutional prohibitions are only against the use of the grant of public monies to private persons and organizations, for private purposes. If the grant is for a public purpose, it is not constitutionally prohibited. Jasper County Farm Bureau v. Jasper County, 315 Mo. 560, 286 S.W. 381, 384. State ex rel State Highway Commission v. Eakin, Mo., 357 S.W.2d 129, 134 (grant to public utility).

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Also the constitutional limitations above-mentioned only apply to the gift of public monies and do not prohibit the use of public monies in payment for services rendered. Public monies may be paid to a private person or corporation including a religious organization, if there is an exchange of consideration. Kintzele v. City of St. Louis, Mo., 347 S.W.2d 694.

According to the State Plan, paragraph 1.61, the program of instruction is to consist of "elementary level education for adults with emphasis on the skills of reading, writing, speaking, listening, arithmetic, citizenship, health practices, consumer knowledge, human relations, and home and family living." Also note that Section 313, Title III, P.L. 89-750 provides that no grant may be made for any educational program related to sectarian instruction.

Article IX, Section 8, prohibiting grants of public monies for religious purposes is not in point since the program here is restricted to secular education. If the Board feels it necessary for the State Plan to refer to Article IX, Section 8, then it should also refer to Article I, Section 7, which prohibits the use of public money in aid of any religion.

Therefore, in order for this office to certify approval of the State Plan, the following amendments will be necessary:

1. Section 2.1 of the State Plan should be amended to conform with Section 306(4), P.L. 89-750, to read as follows:

"2.1 - The State Plan provides for grants to public and private nonprofit agencies for special projects, teacher-training and research, which are designed to carry out any or all of the following objectives:"

2. Section 2.31 of the State Plan should be amended to read as follows:

"2.31 - The State of Missouri is not prohibited from making grants to private nonprofit agencies for purposes within the scope of the State Plan. Our State Constitution authorizes redistribution of federal funds together with state funds for any public purpose designated by the United States (see Plan, Section 7.8)."

3. I recommend that the reference in the present Section 2.31 of the State Plan to Article IX, Section 8, of the Missouri Constitution be deleted

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because it is not responsive to the requirements of the federal guidelines. If the Board be of the opinion that it is necessary to refer to constitutional prohibitions against aid to religion, then a Section 2.32 should be added to read as follows:

"2.32 - Public funds cannot be granted to religious organizations for sectarian purposes (see Plan, Section 7.9)."

4. Section 7.8 of the State Plan should be deleted and in its place should be quoted the provisions of Article III, Section 38(a), of the Missouri Constitution.

5. If the Board elects to include new Section 2.32 quoted supra, then an additional new Section 7.9 should be added, which section should quote the provisions of Article IX, Section 8, and also the provisions of Article I, Section 7, of the Missouri Constitution.

In order to expedite the handling of this matter the certificate of the Attorney General has been executed upon your assurances that the State Plan will be amended as set out above.

Very truly yours,

Louis C. DeFeo, Jr.
Assistant Attorney General

Enclosure - Opinion No. 100
1-18-66, Hearnes