

Opinion No. 164.

Indians—Contracts With Federal Government for Relief and Education of Indians—Governor—School Districts—Superintendent of Public Instruction—Board of Education.

HELD: 1. There is no authority in the Governor, the Superintendent of Public Instruction or the Board of Education to contract on behalf of the state, under Act of Congress, with the Secretary of the Interior for the education and relief of Indians.

2. School Districts, however, have authority to enter into such contracts under the limitations and authorization of Sections 1008 and 1015.

September 3, 1935.
Hon. Frank H. Cooney
Governor of Montana
The Capitol

such contracts with the office of Indian Affairs.

You have submitted to us a copy of a letter received by you from the Honorable William Zimmerman, Jr., Assistant United States Commissioner of Indian Affairs, in regard to Senate Bill 2571 (Public—167—73d Congress) which authorizes the Secretary of the Interior to enter into contracts with any state having legal authority to do so for the education, medical attention, agriculture assistance and social welfare, including relief of distress, of the Indians in such states through the qualifying agencies of the state and to expend under such contracts moneys appropriated by Congress for the above purposes.

At Mr. Zimmerman's request, you have asked for our opinion as to whether or not the State of Montana has legal authority to join in a contract under the provisions of this bill for the education of the Indians, or for any of the other activities stated in the bill.

Unless we have the definite terms of a proposed contract before us, we cannot, of course, render any final opinion concerning this matter.

Generally speaking, we find the rule to be that "the Governor, and other executive officers of the state, have no general authority to contract on its behalf and can bind the state only within the power specially conferred upon them by law." (59 C. J. 171.) We have found no law of this state vesting such general authority upon either the Governor, the Superintendent of Public Instruction, or the State Board of Education.

On the other hand, school districts are political subdivisions of the State of Montana (State ex rel. Fisher v. School District No. 1, 97 Mont. 359, 34 Pac. (2d) 522), and the trustees thereof are given ample authority by Section 1008 and Section 1015, R. C. M. 1921, as amended by Chapter 122, Laws of Montana, 1931, to enter into the class of contracts which seems to have been contemplated by the Act of Congress. Indeed, we understand that several school districts in the past several years have been executing