

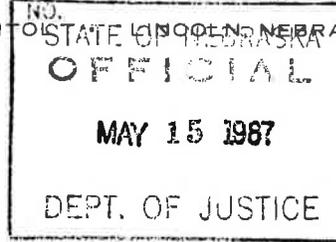
DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

TELEPHONE 402/471-2682

STATE CAPITAL BUILDING LINCOLN, NEBRASKA 68509

#87074



ROBERT M. SPIRE  
Attorney General  
A. EUGENE CRUMP  
Deputy Attorney General

DATE: May 15, 1987

SUBJECT: Whether the State Department of Education may participate in and administer the Carl D. Perkins Scholarship Program, also known as the Congressional Teacher Scholarship Program, as implemented by Title V, Part D, subpart 1 of the Higher Education Act of 1965, as amended by the Higher Education Amendments of 1986.

REQUESTED BY: Joe E. Lutjeharms, Commissioner of Education  
301 Centennial Mall South, Lincoln, Nebraska  
68509

WRITTEN BY: Robert M. Spire, Attorney General  
A. Eugene Crump, Deputy Attorney General

The Carl D. Perkins Scholarship Program, also known as the Congressional Teacher Scholarship Program, is implemented pursuant to Title V, Part D, Subpart 1 of the Higher Education Act of 1965, as amended by the Higher Education Amendments of 1986 and 34 CFR Parts 76 and 653. The stated purpose of this program is to make available, through grants to the States, loans to individuals to pursue teaching careers in education at the pre-school, elementary or secondary level. To receive grants pursuant thereto, the State Department of Education would be required to submit an application to the U.S. Secretary of Education which includes certain assurances, including but not limited to, that it will comply with 34 CFR 653.40, 653.41(b) and 653.42. It is therefore necessary to consider, in some detail, the requirements of each.

34 CFR 653.40 requires each state agency (in Nebraska, the State Department of Education), to enter into an agreement with each individual to be awarded a loan in which the individual agrees to teach, on a full-time basis for a specific period of time for each year for which financial assistance was received, in certain types of public or private non-profit schools or programs within ten years after completing the postsecondary education degree program for which the loan was awarded and if he or she fails to do so or if he or she fails to pursue a course of study leading to certification as a teacher at the elementary or secondary level he or she agrees to repay all or part of the loan plus interest and collection fees. This section of the code of federal regulations also requires each state agency to adopt

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Martel J. Bundy  
Janie C. Castaneda  
Elaine A. Catlin  
Dale A. Comer  
Laura L. Freppel

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John R. Thompson  
Susan M. Ugai  
Linda L. Willard

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procedures under which an individual could appeal any determination of noncompliance.

34 CFR 653.41(b) requires each state agency to monitor each individual to whom it awards a loan to determine if he or she is enrolled as a full-time student in a proper institution of higher education pursuing a course of study leading to certification as a teacher at the elementary or secondary level and is maintaining satisfactory progress in accordance with the criteria established in 34 CFR 668.16(e) of the Student Assistance Provisions.

If a state agency finds an individual in noncompliance with the agreement required by 34 CFR 653.40 or is no longer pursuing a course of study leading to certification as a teacher at the elementary or secondary level, the state agency is required by 34 CFR 653.42 to seek collection of the amount of the loan in the event the individual does not timely repay it.

In connection with the above assurances, it must also be noted that a state agency may use the grants it receives pursuant to the above described federal legislation only for making loans to individuals and no provision is made for a state agency to use federal funds for the operation of the program. See, Federal Register, volume 51, number 193 and 20 U.S.C. § 1119d.

You have raised two possible problems with state administration of the scholarship program in regard to provisions of our Nebraska Constitution. First, you question whether use of state funds for administration of this program violates Article VII, Section 11 of the state constitution which prevents the state from accepting money for sectarian purposes, or from adding public funds of the state to federal grants which might be used for sectarian purposes. In our view, any advantage to non-public schools under the terms of the Perkins Scholarship program is sufficiently remote so that the purpose of the program may be characterized as non-sectarian. Consequently, we do not believe that state administration of the program violates Article VII, Section 11.

Second, you ask whether use of state funds to administer the scholarship program would violate Article XIII, Section 3 of the state constitution which prohibits lending the credit of the state to any individual, association or corporation. The cases which deal with this constitutional provision turn on whether the use of state monies questioned involves an essentially public or a private purpose. The fact that a private individual or entity receives the funds is not dispositive of the issue if the overall purpose is public. In our view, the public purposes and concerns here are sufficient so as to alleviate problems with lending the credit of the state, particularly since state funds will be used only to administer the program.

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We therefore conclude that the State Department of Education may participate in and administer the Congressional Teacher Scholarship Program as implemented by Title V, Part D, subpart 1 of the Higher Education Amendments of 1986 and 34 CFR parts 76 and 653.

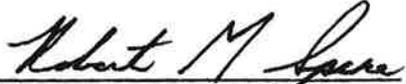
Respectfully submitted,

ROBERT M. SPIRE  
Attorney General

  
A. Eugene Crump  
Deputy Attorney General

AEG:pa

APPROVED:

  
Attorney General