

**LEGISLATIVE EDUCATION STUDY COMMITTEE  
BILL ANALYSIS**

**Bill Number:** CS/SB 47

**52nd Legislature, 1st Session, 2015**

**Tracking Number:** .199458.2

**Short Title:** Prohibit Certain Public Ed Fees

**Sponsor(s):** Senator Craig W. Brandt

**Analyst:** David Craig

**Date:** February 2, 2015

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**SENATE EDUCATION COMMITTEE SUBSTITUTE FOR SENATE BILL 47**

**Bill Summary:**

CS/SB 47 adds a new section of the *Public School Code* to prohibit schools, school boards, and charter schools from charging student fees for:

- participation in certain courses or programs conducted during the school day, including those that:
  - allow the student to earn credit;
  - are subject to the standardized statewide grading system;
  - are pursuant to next-step plans or individualized education plans (IEPs);
  - are necessary for enrollment, grade promotion, or graduation;
  - constitute fine arts education; or
  - constitute physical education;
- participation in any school-sanctioned activity completed before the end of the school day; or
- instruction, educational assistance, special education, or interventions rendered during the school day.

Among its other provisions, CS/SB 47:

- prohibits charges for: instructional materials; school library materials; other materials, supplies or equipment for any course or program conducted during the school day; and items necessary for a student to be enrolled or registered in the school, school district, or charter school – unless the charges are to replace any of these items that a student has lost or damaged; and
- specifies that a school, local school board, or charter school may charge fees to a student for:
  - parking;
  - attendance at an event conducted before or after the school day or not on school grounds;

- participation in any activity sanctioned by the New Mexico Activities Association (NMAA) not completed before the end of the school day;
- a program that is not conducted during a school day, including tutoring;
- a program that is not conducted during a school year, including summer school; or
- anything not prohibited in the list of prohibited fees (provided above).

Finally, Subsection C requires that before any fees permitted or not prohibited in the bill's provisions can be charged to a student, that the fee be enacted by a local school board or governing body of a charter school at a public meeting, with 30 days prior notice.

**Fiscal Impact:**

CS/SB 47 does not contain an appropriation.

**Fiscal Issues:**

Attachment 1, *Fiscal Year 2012-13 School District and Charter School Revenues from Student Fees*, provides a summary of revenues generated from fees by school districts and charter schools in school year 2012-2013, the most recent year for which this information is available from the PED website.

This attachment identifies eight fee-related revenues that are reported in one of three funds:

- Operational;
- Athletics; and
- Non-instructional Support.

Revenues from fees deposited into these funds are identified by the object code for "District Activities," which the *Uniform Chart of Accounts - Manual of Procedures* of the Public Education Department (PED) defines as revenue resulting from co-curricular and extra-curricular activities controlled and administered by the school district or charter school. The fee-related object codes for "District Activities" include the following:

- activities fees (revenue from students for memberships in school clubs or organizations);
- educational fees (revenue from fees charged to students, e.g. lab fees, tutoring fees);
- users fees (revenue from patrons of a school-sponsored activity such as a concert or a football game); and
- summer school fees (revenue from students relating to summer school programs).

For school year 2012-2013, the total of all of these funds was \$23,298,173. This amount is divided between the funds as follows:

- \$5,927,748 in Operational;
- \$7,021,375 in Athletics; and
- \$10,349,050 in Non-instructional Support.

## **Substantive Issues:**

According to the Attorney General's Office analysis of a related bill,<sup>1</sup> SB 47 would clarify which fees a school, local school board, or a governing body of a charter school is allowed to charge students.

## **Background:**

### ***Attorney General Opinions***

There are two Attorney General opinions that specifically address the practice of collecting student fees and the interaction of that practice with Article XII, Section 1 of the New Mexico Constitution,<sup>2</sup> commonly referred to as the "education clause." Included as Attachment 2, the two Attorney General opinions are:

- Attorney General Opinion No. 55-6272, dated September 6, 1955, which found:
  - the practice of Belen High School requiring payment of a \$5.00 fee as a condition to permitting otherwise qualified children to attend the Belen Public High School may be charged only by express legislative authority, even if not prohibited by the constitution; and
  - no such authority existed in the statutes, so the charging of the fees, if required as a condition of attendance at a public school, was prohibited.
- Attorney General Opinion No. 72-19, dated April 27, 1972, which found:
  - it is unconstitutional for a school to charge a public school student a mandatory fee on courses required for graduation;
  - it is usually not constitutional for a public school to charge a student a mandatory fee as a prerequisite to taking an elective course, although some incidental fees may be charged; and
  - the opinion expressed concerns about providing a yes or no to the constitutionality of charging a mandatory fee as a prerequisite to taking an elective course, indicating, "many courts have upheld such fees if they are only for optional, nonessential materials, activities or privileges so long as the fees are reasonable in terms of actual costs and by exempting persons financially unable to pay."

### ***State Supreme Court Decisions***

This second Attorney General Opinion (No. 72-19) resulted in a lawsuit that was heard in 1976 by the New Mexico Supreme Court, *Norton v. Board of Education*. Included in Attachment 3, that Supreme Court decision found:

- that courses required of every student shall be without charge to the student;
- reasonable fees may be charged for "elective" courses; and

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<sup>1</sup> See SB 207, *Prohibit Some Education Fees & Allow Others*

<sup>2</sup> "A uniform system of free public schools sufficient for the education of, and open to, all the children of school age in the state shall be established and maintained."

- the then New Mexico Board of Education shall define what are “required” or “elective” courses in the educational system of New Mexico.

With regard to specific fees, the Supreme Court found that:

- a lower court was in error to hold that only fees for identification cards, physical education towels, and general science handbooks were barred by that language of the constitution; and
- the lower court should instead have ruled that all fees collected by defendants were unconstitutional.

Numerous provisions of the *Public School Code*, including those related to “Courses of Instruction and School Programs,” provide requirements for school districts and charter schools curriculum and instruction. Provisions of the PED administrative rule, including those related to “Standards of Excellence,” provide additional requirements for school district and charter school curriculum and instruction.

### ***School Superintendents***

According to the New Mexico Coalition of Educational Leaders, superintendents and other school leaders have indicated that:

- most school districts engage in the practice of charging students some type of fee, including:
  - activity fees, which allow students to attend all school activities like games, plays, or dances;
  - supplies/materials fees (for example, an art class that requires certain materials that will allow students to create something like a clay pot or vase that they will keep); or
  - parking fees, which allow students to park in the school parking lot; and
- school districts make accommodations for those students who are unable to pay.

### **Committee Referrals:**

SEC/SFC

### **Related Bills:**

SB 207 *Prohibit Some Education Fees & Allow Others*

FISCAL YEAR 2012-13 SCHOOL DISTRICT AND CHARTER SCHOOL REVENUES FROM STUDENT FEES  
(BY REVENUE FUND AND OBJECT CODE)

FUND	OPERATIONAL L (11000)	OPERATIONAL L (11000)	OPERATIONAL L (11000)	OPERATIONAL L (11000)	OPERATIONAL S (22000)	ATHLETIC S (22000)	ATHLETICS L (22000)	NON-INSTRUCTIONAL SUPPORT L (23000)	TOTAL ALL FUNDS			
OBJECT CODE	Feas - Activities (41701)	Feas - Educational (41702)	Feas - Users (41705)	Feas - Summer School (41706)	Feas - Activities (41701)	Feas - Users (41705)	Feas - Activities (41701)	Feas - Users (41705)	Feas - Activities (41701)	Feas - Users (41705)	Feas - Users (41705)	
<b>School Districts</b>												
Alamogordo	\$62,280	\$0	\$231	\$0	\$0	\$108,237	\$0	\$0	\$62,511	\$108,237	\$0	\$170,748
Albuquerque	\$0	\$905,611	\$75,450	\$544,102	\$967,170	\$0	\$0	\$0	\$1,525,163	\$967,170	\$0	\$2,492,333
Animas	\$0	\$0	\$0	\$0	\$7,664	\$260	\$0	\$0	\$0	\$7,924	\$0	\$7,924
Artesia	\$0	\$0	\$312,316	\$0	\$196,011	\$0	\$0	\$21,618	\$312,316	\$196,011	\$94,292	\$602,619
Aztec	\$4	\$14,256	\$0	\$0	\$0	\$98,406	\$0	\$0	\$14,260	\$98,406	\$0	\$112,666
Belen	\$45,002	\$0	\$0	\$0	\$161,686	\$0	\$0	\$0	\$45,002	\$161,686	\$0	\$206,688
Bernalillo	\$310,597	\$0	\$25	\$0	\$33,761	\$0	\$0	\$0	\$310,622	\$33,761	\$0	\$344,382
Bloomfield	\$0	\$6,715	\$100	\$0	\$0	\$150,057	\$0	\$0	\$6,715	\$150,057	\$272,722	\$429,494
Capitan	\$0	\$0	\$0	\$0	\$0	\$33,811	\$0	\$0	\$0	\$33,811	\$0	\$33,911
Carlsbad	\$50,719	\$0	\$53,575	\$0	\$0	\$165,013	\$0	\$320,820	\$104,293	\$165,013	\$393,811	\$663,117
Carrizozo	\$0	\$0	\$0	\$0	\$0	\$6,664	\$0	\$0	\$0	\$6,664	\$0	\$6,664
Central	\$150	\$16,447	\$5	\$0	\$0	\$270,204	\$0	\$104,220	\$16,602	\$270,204	\$104,220	\$391,026
Chama Valley	\$0	\$576	\$0	\$0	\$38,346	\$0	\$0	\$0	\$576	\$38,346	\$0	\$38,922
Cimarron	\$0	\$29	\$30	\$0	\$9,208	\$0	\$0	\$0	\$59	\$9,208	\$0	\$9,266
Clayton	\$125	\$26,579	\$500	\$0	\$39,843	\$0	\$0	\$0	\$27,204	\$39,843	\$0	\$67,047
Cloudcroft	\$0	\$0	\$0	\$0	\$14,044	\$0	\$0	\$0	\$0	\$14,044	\$0	\$14,044
Clovis	\$0	\$0	\$1,066	\$3,950	\$0	\$230,138	\$0	\$0	\$5,016	\$230,138	\$0	\$235,155
Cobre	\$0	\$0	\$0	\$0	\$0	\$39,495	\$0	\$0	\$0	\$39,495	\$0	\$39,495
Corona	\$0	\$0	\$780	\$0	\$5,511	\$0	\$0	\$0	\$780	\$5,511	\$0	\$6,291
Cuba	\$0	\$62	\$9,239	\$0	\$0	\$30,137	\$0	\$0	\$9,302	\$30,137	\$0	\$39,438
Deming	\$0	\$9,604	\$0	\$0	\$56,802	\$0	\$0	\$167,846	\$9,604	\$56,802	\$167,846	\$234,252
Des Moines	\$0	\$0	\$0	\$0	\$28,937	\$0	\$0	\$0	\$0	\$28,937	\$0	\$28,937
Dexter	\$8,166	\$0	\$0	\$0	\$19,645	\$0	\$0	\$315,820	\$8,166	\$19,645	\$315,820	\$343,632
Dora	\$0	\$0	\$0	\$0	\$18,845	\$0	\$0	\$0	\$0	\$18,845	\$0	\$18,845
Dulce	\$2,121	\$0	\$1,163	\$0	\$52,722	\$0	\$0	\$0	\$3,284	\$52,722	\$0	\$56,006
Elda	\$0	\$0	\$0	\$0	\$0	\$17,110	\$0	\$0	\$0	\$17,110	\$48,087	\$65,197
Espanola	\$462	\$0	\$99	\$0	\$50,282	\$67,680	\$0	\$0	\$561	\$117,962	\$0	\$118,523
Estancia	\$196	\$1,789	\$250	\$2,975	\$0	\$25,454	\$0	\$0	\$5,210	\$25,454	\$0	\$30,664
Eunice	\$0	\$458	\$0	\$0	\$105,643	\$0	\$0	\$0	\$458	\$105,643	\$0	\$106,101
Farmington	\$0	\$35,816	\$0	\$0	\$289,866	\$0	\$355,756	\$0	\$35,816	\$289,866	\$355,756	\$681,438
Floyd	\$0	\$0	\$1,200	\$0	\$13,445	\$0	\$88,584	\$0	\$1,200	\$13,445	\$88,584	\$103,228
Fort Sumner	\$0	\$0	\$54	\$0	\$30,464	\$0	\$0	\$0	\$54	\$30,464	\$0	\$30,518
Gadsden	\$31	\$45	\$887	\$4,801	\$0	\$130,565	\$603,554	\$0	\$5,763	\$130,565	\$603,554	\$739,862
Gallup	\$0	\$0	\$563	\$0	\$359,896	\$0	\$563,367	\$0	\$563	\$359,896	\$563,367	\$945,826
Grady	\$310	\$475	\$9	\$0	\$11,124	\$0	\$0	\$0	\$794	\$11,124	\$0	\$11,918
Grants	\$0	\$15,352	\$0	\$0	\$108,678	\$0	\$203,658	\$0	\$15,352	\$108,678	\$203,658	\$327,689
Hagerman	\$0	\$0	\$0	\$0	\$0	\$16,873	\$0	\$0	\$0	\$16,873	\$0	\$16,873
Hatch	\$0	\$0	\$50	\$0	\$22,129	\$10,449	\$0	\$0	\$50	\$32,578	\$0	\$32,628
Hobbs	\$0	\$0	\$0	\$9,090	\$0	\$213,681	\$59,622	\$1,099,700	\$9,090	\$213,681	\$1,159,322	\$1,382,093
Hondo Valley	\$0	\$0	\$101	\$0	\$17,901	\$0	\$0	\$0	\$101	\$17,901	\$0	\$18,002
House	\$0	\$0	\$0	\$0	\$303	\$0	\$0	\$0	\$0	\$303	\$0	\$303
Jail	\$8,000	\$1,132	\$0	\$0	\$15,225	\$0	\$0	\$0	\$9,132	\$15,225	\$0	\$24,357
Jemez Mountain	\$2	\$0	\$0	\$0	\$662	\$10,655	\$44,322	\$3,859	\$4	\$11,517	\$48,181	\$59,702
Jemez Valley	\$0	\$0	\$3,425	\$0	\$0	\$15,046	\$0	\$0	\$3,425	\$15,046	\$0	\$18,471
Lake Arthur	\$0	\$0	\$0	\$0	\$6,469	\$0	\$323,545	\$0	\$6,469	\$323,545	\$0	\$330,014
Las Cruces	\$0	\$9,900	\$31,542	\$207,575	\$0	\$431,795	\$1,139,249	\$0	\$249,017	\$431,795	\$1,139,249	\$1,820,061
Logan	\$200	\$1,082	\$4,210	\$0	\$9,053	\$43,198	\$0	\$0	\$5,492	\$52,251	\$0	\$52,251
Lordsburg	\$0	\$4,700	\$0	\$3,300	\$0	\$32,868	\$161,247	\$0	\$8,000	\$32,868	\$161,247	\$202,115

**FISCAL YEAR 2012-13 SCHOOL DISTRICT AND CHARTER SCHOOL REVENUES FROM STUDENT FEES  
(BY REVENUE FUND AND OBJECT CODE)**

FUND	OPERATIONAL L (11000)	OPERATIONAL L (11000)	OPERATIONAL L (11000)	OPERATIONAL S (22000)	ATHLETICS (22000)	NON-INSTRUCTIONAL SUPPORT L (23000)	TOTAL ALL FUNDS				
OBJECT CODE	Fees - Activities (41701)	Fees - Educational (41702)	Fees - Users (41705)	Fees - Summer School (41706)	Fees - Activities (41701)	Fees - Users (41705)	Fees - Activities (41701)	Fees - Users (41705)			
Los Alamos	\$16,879	\$0	\$0	\$1,135	\$1,692	\$29,010	\$443,618	\$18,014	\$110,342	\$472,628	\$600,984
Los Lunas	\$0	\$0	\$0	\$10,078	\$108,830	\$0	\$99,488	\$10,078	\$108,830	\$1,209,180	\$1,328,088
Loving	\$35	\$0	\$0	\$9,260	\$49,500	\$0	\$0	\$2,995	\$49,500	\$0	\$58,795
Lovington	\$300	\$0	\$4,584	\$0	\$89,456	\$0	\$0	\$4,884	\$89,456	\$0	\$94,340
Magdalena	\$0	\$0	\$0	\$0	\$18,995	\$0	\$0	\$0	\$18,995	\$0	\$18,995
Maxwell	\$0	\$38	\$1,680	\$0	\$9,560	\$0	\$50,717	\$1,718	\$9,560	\$50,717	\$61,994
Melrose	\$0	\$0	\$0	\$0	\$20,971	\$0	\$154,174	\$0	\$20,971	\$154,174	\$175,145
Mesa Vista	\$0	\$0	\$440	\$0	\$800	\$0	\$100,577	\$440	\$42,028	\$100,577	\$143,045
Mora	\$0	\$0	\$0	\$0	\$34,639	\$0	\$0	\$0	\$34,639	\$0	\$34,639
Moriarty	\$0	\$0	\$12,525	\$0	\$192,989	\$0	\$0	\$12,525	\$192,989	\$0	\$205,515
Mesquero	\$0	\$0	\$0	\$0	\$3,416	\$0	\$0	\$0	\$3,416	\$0	\$3,416
Mountainair	\$0	\$0	\$0	\$0	\$14,620	\$0	\$0	\$0	\$14,620	\$0	\$14,620
Pecos	\$0	\$1,000	\$525	\$675	\$50,486	\$0	\$0	\$2,200	\$50,486	\$0	\$52,686
Penasco	\$0	\$0	\$0	\$0	\$3,286	\$0	\$0	\$0	\$3,286	\$0	\$3,286
Pojoaque	\$0	\$5,720	\$96,441	\$10,075	\$0	\$0	\$0	\$112,236	\$115,766	\$0	\$228,002
Portales	\$0	\$0	\$6,877	\$0	\$63,008	\$0	\$610,825	\$8,877	\$63,008	\$610,825	\$682,710
Quemado	\$0	\$740	\$204	\$0	\$6,240	\$653	\$224	\$944	\$6,893	\$8,867	\$16,703
Questa	\$0	\$0	\$0	\$0	\$21,873	\$0	\$0	\$0	\$21,873	\$0	\$21,873
Raton	\$0	\$4,211	\$2,758	\$9,640	\$27,091	\$0	\$0	\$16,609	\$27,091	\$0	\$43,701
Reserve	\$75	\$270	\$153	\$0	\$10,225	\$0	\$0	\$498	\$10,225	\$0	\$10,723
Rio Rancho	\$0	\$1,299,029	\$0	\$10,448	\$152,815	\$0	\$401,121	\$1,309,477	\$152,815	\$401,121	\$1,863,413
Roswell	\$0	\$0	\$0	\$26,294	\$265,808	\$0	\$0	\$26,294	\$265,808	\$0	\$292,102
Roy	\$594	\$0	\$0	\$0	\$3,095	\$0	\$70,129	\$594	\$3,095	\$70,129	\$73,817
Ruidoso	\$6,760	\$0	\$53,392	\$9,558	\$0	\$45,197	\$0	\$68,710	\$45,197	\$0	\$113,907
San Jon	\$3,277	\$0	\$0	\$0	\$12,546	\$0	\$0	\$3,277	\$12,546	\$0	\$15,823
Santa Fe	\$0	\$0	\$6,742	\$0	\$139,456	\$0	\$0	\$6,742	\$139,456	\$0	\$146,197
Santa Rosa	\$0	\$0	\$0	\$0	\$52,627	\$0	\$0	\$0	\$52,627	\$0	\$52,627
Silver City	\$0	\$0	\$0	\$0	\$67,459	\$0	\$0	\$0	\$67,459	\$0	\$67,459
Socorro	\$0	\$1,640	\$0	\$0	\$560	\$0	\$0	\$1,640	\$560	\$0	\$2,200
Springer	\$0	\$0	\$499	\$0	\$25,839	\$0	\$0	\$499	\$25,839	\$0	\$26,338
Taos	\$192,812	\$0	\$0	\$0	\$71,587	\$0	\$0	\$192,812	\$71,587	\$0	\$264,399
Tatum	\$0	\$0	\$0	\$0	\$17,886	\$0	\$0	\$0	\$17,886	\$0	\$17,886
Texico	\$0	\$100	\$1,200	\$0	\$41,728	\$0	\$198,936	\$1,300	\$41,728	\$198,936	\$241,964
Truth or Consequences	\$105	\$0	\$1,314	\$0	\$35,936	\$0	\$0	\$1,419	\$35,936	\$0	\$37,355
Tucumcari	\$0	\$0	\$67,823	\$0	\$19,772	\$0	\$0	\$67,823	\$19,772	\$0	\$87,596
Tularosa	\$0	\$0	\$329	\$0	\$29,496	\$0	\$65,256	\$329	\$29,496	\$65,256	\$95,080
Vaughn	\$0	\$0	\$120	\$0	\$21,267	\$0	\$0	\$0	\$21,267	\$0	\$21,267
West Las Vegas	\$0	\$0	\$275	\$0	\$40,427	\$0	\$1,784	\$275	\$40,427	\$1,784	\$42,202
Zuni	\$854	\$0	\$11,947	\$0	\$54,430	\$0	\$0	\$12,801	\$54,430	\$0	\$67,231
<b>Locally-chartered Charter Schools</b>											
Academia de Lengua y Cultura (Albuquerque)	\$462	\$0	\$0	\$0	\$0	\$891	\$0	\$462	\$0	\$891	\$1,353
Albuquerque Talent Development (Albuquerque)	\$0	\$2,238	\$0	\$0	\$0	\$0	\$0	\$2,238	\$0	\$0	\$2,238
Alice King Community School (Albuquerque)	\$0	\$425	\$29,566	\$0	\$0	\$6,849	\$0	\$29,991	\$0	\$6,849	\$36,840

**FISCAL YEAR 2012-13 SCHOOL DISTRICT AND CHARTER SCHOOL REVENUES FROM STUDENT FEES  
(BY REVENUE FUND AND OBJECT CODE)**

FUND	OPERATIONA L (11000)	OPERATIONA L (11000)	OPERATIONA L (11000)	OPERATIONA L (11000)	OPERATIONAL S (22000)	ATHLETIC S (22000)	ATHLETICS (22000)	NON-INSTRUCTIONAL SUPPORT (23000)	TOTAL ALL FUNDS				
OBJECT CODE	Fees - Activities (41701)	Fees - Educational (41702)	Fees - Users (41705)	Fees - Summer School (41706)	Fees - Activities Users (41701)	Fees - Users (41705)	Fees - Activities (41701)	Fees - Users (41705)	Fees - Users (41705)				
Bataan Military Academy Charter (Albuquerque)	\$345	\$5,633	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$5,979	\$0	\$0	\$5,979
Christine Duncan's Heritage Academy (Albuquerque)	\$0	\$0	\$5,592	\$0	\$0	\$0	\$0	\$0	\$0	\$5,592	\$0	\$0	\$5,592
Corrales International School (Albuquerque)	\$0	\$49	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$49	\$0	\$0	\$49
Digital Arts and Technology Academy (Albuquerque)	\$0	\$0	\$0	\$46,755	\$0	\$0	\$0	\$0	\$0	\$46,755	\$0	\$0	\$46,755
El Camino Real Academy (Albuquerque)	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Gordon Bernell Charter School (Albuquerque)	\$0	\$0	\$500	\$0	\$0	\$0	\$0	\$0	\$0	\$500	\$0	\$0	\$500
La Academia de Esperanza (Albuquerque)	\$0	\$334	\$0	\$0	\$0	\$0	\$0	\$649	\$0	\$334	\$0	\$649	\$983
Los Puentes Charter School (Albuquerque)	\$5,017	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$5,017	\$0	\$0	\$5,017
Messors of the Rio Grande (Albuquerque)	\$65,883	\$168,782	\$1,635	\$0	\$0	\$0	\$0	\$0	\$0	\$236,300	\$0	\$0	\$236,300
Mountain Mahogany Community School (Albuquerque)	\$0	\$6,890	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$6,890	\$0	\$0	\$6,890
Native American Community Academy (Albuquerque)	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Nuestros Valores Charter School (Albuquerque)	\$0	\$0	\$20	\$0	\$0	\$0	\$0	\$0	\$2,331	\$20	\$0	\$2,331	\$2,351
Public Academy for Performing Arts (Albuquerque)	\$0	\$0	\$100	\$0	\$0	\$0	\$0	\$0	\$123,593	\$100	\$0	\$123,593	\$123,693
Robert F. Kennedy Charter School (Albuquerque)	\$1,533	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$1,533	\$0	\$0	\$1,533
SIA Tech (School for Integrated Academics & Tech) (Albuquerque)	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
South Valley Academy (Albuquerque)	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$17,073	\$0	\$0	\$0	\$17,073	\$17,073
Twenty-First Century Charter (Albuquerque)	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Mosaic Academy Charter (Aztec)	\$0	\$0	\$1,520	\$0	\$0	\$0	\$0	\$0	\$0	\$1,520	\$0	\$0	\$1,520
Jefferson Montessori Academy (Carlsbad)	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$7,499	\$0	\$0	\$0	\$7,499	\$7,499
Moreno Valley High School (Cimmaron)	\$0	\$0	\$1,879	\$0	\$0	\$0	\$0	\$0	\$0	\$1,879	\$0	\$0	\$1,879
Deming Cesar Chavez Charter High School (Deming)	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

**FISCAL YEAR 2012-13 SCHOOL DISTRICT AND CHARTER SCHOOL REVENUES FROM STUDENT FEES  
(BY REVENUE FUND AND OBJECT CODE)**

FUND	OPERATIONAL L (11000)	OPERATIONAL L (11000)	OPERATIONAL L (11000)	OPERATIONAL S (22000)	ATHLETIC S (22000)	ATHLETICS (22000)	NON-INSTRUCTIONAL SUPPORT (23000)	TOTAL ALL FUNDS				
OBJECT CODE	Fees - Activities (41701)	Fees - Educational (41702)	Fees - Users (41705)	Fees - Summer School (41706)	Fees - Activities Users (41705)	Fees - Users (41705)	Fees - Activities (41701)	Fees - Users (41705)				
Carmos De Los Ninos (Espanola)	\$0	\$10	\$0	\$9,818	\$0	\$0	\$0	\$39,358	\$0	\$0	\$0	\$49,186
New Mexico Virtual Academy (Farmington)	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Anthony Charter School (Gadsden)	\$0	\$560	\$0	\$0	\$0	\$0	\$0	\$2,571	\$560	\$0	\$0	\$3,131
Middle College High School (Gallup)	\$0	\$0	\$1,004	\$0	\$0	\$0	\$0	\$0	\$1,004	\$0	\$0	\$1,004
Lindrieth Area Heritage Charter School (Jemez Mountain)	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
San Diego Riverside Charter School (Jemez Valley)	\$0	\$0	\$0	\$0	\$0	\$0	\$2,734	\$3,370	\$0	\$0	\$0	\$2,734
Waiatowa Charter High School (Jemez Valley)	\$0	\$200	\$0	\$0	\$0	\$1,995	\$0	\$0	\$200	\$1,995	\$0	\$5,565
La Academia Dolores Huerta (Las Cruces)	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$14,368	\$0	\$0	\$0	\$14,368
Las Montañas Charter School (Las Cruces)	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Roots and Wings Community School (Questa)	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Sidney Gutierrez Middle School (Roswell)	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Academy for Technology and the Classics (Santa Fe)	\$0	\$0	\$0	\$0	\$0	\$0	\$121,120	\$0	\$0	\$0	\$0	\$121,120
Monte Del Sol Charter School (Santa Fe)	\$19,075	\$7,747	\$0	\$0	\$0	\$0	\$0	\$0	\$26,822	\$0	\$0	\$26,822
Tierra Encantada Charter School (Santa Fe)	\$357	\$0	\$0	\$0	\$0	\$0	\$30,589	\$0	\$357	\$0	\$0	\$30,945
Turquoise Trail Elementary (Santa Fe)	\$315	\$0	\$0	\$0	\$0	\$0	\$0	\$66,871	\$315	\$0	\$0	\$67,186
Cottonwood Valley Charter School (Socorro)	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Anansi Charter School (Taos)	\$0	\$0	\$58,284	\$0	\$0	\$0	\$0	\$0	\$58,284	\$0	\$0	\$58,284
Taos Municipal Charter School (Taos)	\$0	\$0	\$34,719	\$0	\$0	\$0	\$0	\$0	\$34,719	\$0	\$0	\$34,719
Vista Grande High School (Taos)	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Rio Galinas School (West Las Vegas)	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
<b>State-chartered-Charter Schools</b>												
Academy of Trades and Technology	\$0	\$1,510	\$0	\$0	\$0	\$0	\$4,494	\$0	\$1,510	\$0	\$0	\$6,004
ACE	\$4,010	\$0	\$438	\$0	\$0	\$0	\$0	\$0	\$4,448	\$0	\$0	\$4,448
AIMS @ UNM	\$1,167	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$1,167	\$0	\$0	\$1,167

**FISCAL YEAR 2012-13 SCHOOL DISTRICT AND CHARTER SCHOOL REVENUES FROM STUDENT FEES  
(BY REVENUE FUND AND OBJECT CODE)**

FUND	OBJECT CODE	OPERATIONAL L (11000)	OPERATIONAL L (11000)	OPERATIONAL L (11000)	OPERATIONAL S (22000)	ATHLETIC S (22000)	ATHLETICS (22000)	NON-INSTRUCTIONAL SUPPORT (23000)	NON-INSTRUCTIONAL SUPPORT (23000)	NON-INSTRUCTIONAL SUPPORT (23000)	SUBTOTAL OPERATIONAL (11000)	SUBTOTAL ATHLETICS (22000)	SUBTOTAL INSTRUCTIONAL SUPPORT (23000)	TOTAL ALL FUNDS
		Fees - Activities (41701)	Fees - Educational (41702)	Fees - Users (41705)	Fees - Summer School (41706)	Fees - Activities (41701)	Fees - Users (41705)	Fees - Activities (41701)	Fees - Users (41705)	Fees - Users (41705)				
Albuquerque School of Excellence		\$0	\$2,016	\$0	\$0	\$0	\$0	\$32,708	\$0	\$0	\$2,016	\$0	\$32,708	\$34,724
Albuquerque Sign Language Academy		\$5,858	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$5,858	\$0	\$0	\$5,858
Aldo Leopold Charter School		\$0	\$18,032	\$1,479	\$0	\$0	\$0	\$0	\$0	\$0	\$19,511	\$0	\$0	\$19,511
Alma D'Arte Charter High School		\$2,762	\$0	\$0	\$0	\$0	\$0	\$13,051	\$0	\$0	\$2,762	\$0	\$13,051	\$15,813
Amy Biehl Charter High School		\$5,079	\$11,037	\$3,009	\$0	\$0	\$0	\$7,882	\$0	\$0	\$19,124	\$0	\$7,882	\$27,006
ASK Academy		\$0	\$752	\$0	\$0	\$0	\$0	\$17,381	\$0	\$0	\$752	\$0	\$17,381	\$18,133
Cesar Chavez Community School		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Cien Aguas International School		\$5,140	\$2,215	\$52,410	\$0	\$0	\$0	\$0	\$0	\$0	\$59,765	\$0	\$0	\$59,765
Coral Community Charter		\$848	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$848	\$0	\$0	\$848
Cottonwood Classical Preparatory School		\$0	\$20,689	\$0	\$0	\$0	\$0	\$131,389	\$0	\$0	\$20,689	\$0	\$131,389	\$152,078
Creative Education Preparatory Institute #1		\$0	\$7,395	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$7,395	\$0	\$0	\$7,395
East Mountain High School		\$153,234	\$0	\$0	\$0	\$0	\$0	\$18,476	\$0	\$0	\$153,234	\$0	\$18,476	\$171,711
Estancia Valley Classical Academy		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$3,228	\$0	\$0	\$3,228	\$0	\$3,228
Gilbert L. Sena Charter School		\$58	\$0	\$0	\$0	\$0	\$0	\$11,008	\$0	\$0	\$58	\$0	\$11,008	\$11,066
Great Academy (The)		\$2,182	\$0	\$786	\$0	\$0	\$0	\$0	\$0	\$0	\$2,968	\$0	\$0	\$2,968
Horizon Academy West		\$85,402	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$85,402	\$0	\$0	\$85,402
International School @ Mesa Del Sol		\$0	\$0	\$0	\$0	\$0	\$0	\$3,850	\$0	\$0	\$0	\$0	\$3,850	\$3,850
J. Paul Taylor School		\$0	\$13,646	\$0	\$0	\$0	\$0	\$18,223	\$0	\$0	\$13,646	\$0	\$18,223	\$31,869
La Jicarita Community School		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
La Promesa Early Learning Center		\$0	\$7,888	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$7,888	\$0	\$0	\$7,888
La Resolana Leadership Academy		\$1,295	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$1,295	\$0	\$0	\$1,295
La Tierra Montessori School of the Arts & Sciences		\$1,617	\$0	\$0	\$0	\$0	\$0	\$1,217	\$0	\$0	\$1,617	\$0	\$1,217	\$2,834
Learning Community Charter School		\$0	\$0	\$0	\$0	\$0	\$0	\$7,146	\$0	\$0	\$0	\$0	\$7,146	\$7,146
MASTERS Program		\$0	\$127	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$127	\$0	\$0	\$127
McCurdy Charter School		\$10,788	\$2,870	\$0	\$0	\$2,010	\$19,609	\$0	\$0	\$0	\$13,657	\$21,619	\$0	\$35,277
Media Arts Collaborative Charter School		\$7,163	\$11,863	\$1,953	\$0	\$0	\$0	\$0	\$0	\$0	\$20,979	\$0	\$0	\$20,979
Mission Achievement and Success		\$0	\$0	\$0	\$0	\$0	\$0	\$5,674	\$0	\$0	\$0	\$0	\$5,674	\$5,674
Montessori Elementary School		\$235,000	\$0	\$0	\$0	\$0	\$0	\$25,645	\$0	\$0	\$235,000	\$0	\$25,645	\$260,645

**FISCAL YEAR 2012-13 SCHOOL DISTRICT AND CHARTER SCHOOL REVENUES FROM STUDENT FEES  
(BY REVENUE FUND AND OBJECT CODE)**

FUND	OPERATIONA L (11000) Fees - Activities (41701)	OPERATIONA L (11000) Fees - Educational (41702)	OPERATIONA L (11000) Fees - Users (41705)	OPERATIONAL S (11000) Fees - Summer School (41706)	ATHLETIC S (22000) Fees - Users (41705)	NON-INSTRUCTIONAL SUPPORT (23000) Fees - Activities (41701)	NON-INSTRUCTIONAL SUPPORT (23000) Fees - Users (41705)	SUBTOTAL OPERATIONAL (11000)	SUBTOTAL ATHLETICS (22000)	SUBTOTAL NON-INSTRUCTIONAL SUPPORT (23000)	TOTAL ALL FUNDS
New America School	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
New America School - Las Cruces	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
New Mexico International School	\$0	\$0	\$0	\$0	\$0	\$1,507	\$0	\$0	\$0	\$1,507	\$1,507
New Mexico School for the Arts	\$0	\$966	\$0	\$0	\$0	\$0	\$0	\$966	\$0	\$0	\$966
North Valley Academy	\$0	\$102	\$0	\$0	\$0	\$0	\$0	\$102	\$0	\$0	\$102
Ralph J. Bunche Academy	\$3,424	\$3,385	\$0	\$275	\$0	\$5,333	\$0	\$7,084	\$0	\$5,333	\$12,417
Red River Valley Charter School	\$0	\$0	\$3,346	\$0	\$0	\$0	\$0	\$3,346	\$0	\$0	\$3,346
Sage Montessori Charter School	\$0	\$0	\$0	\$0	\$0	\$2,884	\$0	\$0	\$0	\$2,884	\$2,884
School of Dreams Academy	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
South Valley Preparatory School	\$0	\$0	\$0	\$0	\$0	\$38,486	\$0	\$0	\$0	\$38,486	\$38,486
Southwest Intermediate Learning Center	\$0	\$2,587	\$0	\$0	\$0	\$0	\$0	\$2,587	\$0	\$0	\$2,587
Southwest Primary Learning Center	\$0	\$2,320	\$0	\$0	\$0	\$0	\$0	\$2,320	\$0	\$0	\$2,320
Southwest Secondary Learning Center	\$0	\$29,650	\$0	\$0	\$0	\$0	\$0	\$29,650	\$0	\$0	\$29,650
SW Aeronautics, Mathematics and Science Academy	\$0	\$8,222	\$0	\$0	\$0	\$0	\$0	\$8,222	\$0	\$0	\$8,222
Taos Academy	\$0	\$0	\$0	\$0	\$0	\$4,306	\$0	\$0	\$0	\$4,306	\$4,306
Taos Integrated School of the Arts	\$2,165	\$0	\$259	\$0	\$0	\$3,323	\$0	\$2,424	\$0	\$3,323	\$5,746
Tierra Adentro	\$0	\$1,089	\$670	\$6,240	\$0	\$0	\$20,679	\$7,999	\$0	\$20,679	\$28,678
Uplift Community School	\$0	\$0	\$0	\$0	\$0	\$2,033	\$0	\$0	\$0	\$2,033	\$2,033
Village Academy	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
William W. & Josephine Dorn Charter Comm School	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
<b>STATEWIDE</b>	<b>\$1,330,232</b>	<b>\$2,704,606</b>	<b>\$967,866</b>	<b>\$925,044</b>	<b>\$4,345,087</b>	<b>\$7,786,247</b>	<b>\$2,562,804</b>	<b>\$5,927,748</b>	<b>\$7,021,375</b>	<b>\$10,349,050</b>	<b>\$23,298,173</b>

**Opinion No. 55-6272**

September 6, 1955

**BY:** RICHARD H. ROBINSON, Attorney General

**TO:** Mrs. Georgia L. Lusk, Superintendent of Public Instruction, Department of Education, Santa Fe, New Mexico

With your letter of August 26, you enclose a clipping from a Belen newspaper and ask our opinion as to the validity of the practice described therein.

According to the clipping, the Belen Public High School is requiring all students to purchase activity cards at a cost of \$ 5.00 per semester. These activity cards cover athletic events, schools plays, school newspaper and the annual. The clipping states: "Each student must have the \$ 5 for payment on the activity ticket before he receives a registration card." It thus appears that the Belen High School is requiring the payment of this fee as a condition to permitting otherwise qualified children to attend the Belen Public High School.

Article XII, Section 1 of the Constitution of New Mexico provides as follows:

"A uniform system of free public schools sufficient for the education of, and open to, all the children of school age in the state shall be established and maintained."

Article XII, Section 5 of the Constitution of New Mexico provides as follows:

"Every child of school age and of sufficient physical and mental ability shall be required to attend a public or other school during such period and for such time as may be prescribed by law."

The question is, therefore, whether the requirement of the payment of this fee from a child subject to the provisions of Article XII, Section 5, is in violation of Article XII, Section 1 of the Constitution establishing a free public school system.

In 47 Am. Jur., Schools, § 148, it is said:

"There is a decided conflict of authority as to the right of a public school to exact an incidental fee from students. Some cases squarely hold that such a fee cannot be charged, while others hold that with legislative authority, such a fee is proper. These latter cases hold that the term 'free' as applied to schools means free so far as tuition is concerned, and does not preclude an assessment of a reasonable sum for incidental expenses.

In those jurisdictions where an incidental fee cannot be charged, such a result cannot be accomplished by indirection. Thus, an act of the legislature permitting the renting of books to pupils cannot be made the cloak for a fee by making the renting compulsory."

The only New Mexico case touching on the problem is *Strawn v. Russell*, 54 N.M. 221, 219 P. 2d 292, where, in speaking of consolidation of school districts, the court stated:

"If the districts are made so large that school children are unable to make the trip to school and back home each day, then they would be denied a free school just as effectively as if no school existed."

It appears from the quotation from American Jurisprudence that such fees may only be charged by express legislative authority, even if not prohibited by the Constitution. We find no such authority in our statutes and hold, therefore, that the charging of these fees, if required as a condition to attendance at a public school, is prohibited.

By Walter R. Kegel

Assistant Attorney General

## Opinion No. 72-19

April 27, 1972

**BY:** OPINION OF DAVID L. NORVELL, Attorney General    Oliver E. Payne, Deputy Attorney General

**TO:** The Honorable Robert A. Mondragon, Lieutenant Governor, State of New Mexico, Legislative-Executive Building, Santa Fe, New Mexico 87501

### QUESTIONS

#### QUESTIONS

1. Is it constitutional for a school to charge a public school student a mandatory fee on courses required for graduation?
2. Is it constitutional for a public school to charge a student a mandatory fee as a prerequisite to taking an elective course?

#### CONCLUSIONS

1. No.
2. Usually not, but some incidental fees are upheld.

### OPINION

#### {\*34} ANALYSIS

Article XII, Section 1, New Mexico Constitution, directs the Legislature to establish:

"A uniform system of **free public schools** sufficient for the education of and open to all the children of school age in the state shall be established and maintained." (Emphasis added.)

Under state constitutional provisions like the one quoted above from our Constitution, matriculation, registration, textbook and transcript fees have been invalidated in a number of cases. Understand that throughout we are speaking of public schools, i.e., elementary and secondary. **Dowell v. School Dist.**, Ark. 250 S.W.2d 127 (1950); **Brewer v. Ray**, Ga., 105 S.E. 667 (1919); **Bond v. Public Schools of Ann Arbor School Dist.**, Mich. 178 N. W. 2d 484 (1970); **Paulson v. Minidoka County School Dist.**, Idaho, 463 P.2d 935 (1970).

Some cases have held that textbook damage deposits are constitutional. **Segar v. Board of Education**, Ill., 148 N.E. 289. Occasionally even a textbook rental charge has been upheld. **Hammer v. Board of Education**, Ill., 265 N.E.2d 616 (1970). However, the weight of authority is the other way. **Mathis v. Gordy**, Ga., 47 S.E. 171; **Paulson v. Minidoka County School Dist.**, *supra*.

The thrust of the cases holding the type of fees mentioned in your first question invalid is that the item or items for which the fee was charged was a **necessary element** of the school's activity, **Paulson v. Minidoka County School Dist.**, *supra*, or was an essential part of a system of free public elementary and secondary schools, **Bond v. Public Schools of Ann Arbor School Dist.**, *supra*. In other words, "free" means just that -- "free," "without charge." We have little reluctance in answering your first question in the negative.

Your second question is a more difficult one to answer in a "yes or no" fashion. Many courts have upheld such fees if they are only for optional, nonessential materials, activities or privileges so long as the fees are reasonable in terms of actual costs and by exempting persons financially unable to pay. See Annotation in 41 A.L.R. 3rd 755. But a tuition fee for manual training was held not to be legally chargeable by a school, except for non-residents, as long ago at 1910.

**Maxey v. Oshkosh**, Wis., 128 N.E. 899. The fact that manual training was **not** a compulsory course did not alter the conclusion. The court noted that a pupil in a school district was just as much entitled to have manual training taught him without exaction of a fee, as he was {\*35} to have mathematics taught without being obliged to pay therefor. It has also been held that a school district exceeded its authority in requiring, **as a condition of attendance**, the payment of \$ 13, which consisted of \$ 5 for athletic privileges, \$ 3 for library fees, and \$ 5 for literary fees, **Morris v. Vandiver**, Miss., 145 So. 228 (1933) even though the fees were used to subsidize specific events, facilities, and activities rather than salaries for teachers. The court, however, did not question the power of the trustees to impose "incidental" fees as a condition to using the specific facilities.

In the 1970 **Paulson** case, *supra*, the court said:

"But it should be noted that, because social and extra-curricular activities are not necessary elements of a high school career, the constitution does not prohibit [the school board] from setting fees to cover costs of such activities to be paid by students who wish to exercise an option to participate in them."

We see, then, that some "incidental" fees have been held to be valid; but because of the delicacy and difficulty in resolving the questions on the basis of the Constitution, the courts have shown a decided preference for ruling on these questions on a factual case-by-case method. We, too, find it desirable to use such an approach.

The 1970 Michigan case, **Bond v. Public Schools of Ann Arbor**, *supra*, contains a facet which is of considerable interest. Some of the Michigan parents were seeking a refund of fees paid, and the court said:

"As bearing on the question of good faith, on October 16, 1964, the Attorney General rendered an opinion . . . in which he ruled that . . . a board of education may not lawfully charge fees for participation in courses such as band or for participation in athletic programs."

Since the board of education had apparently chosen not to follow the legal advice given it by the Attorney General, the court ordered a refund by the board.

NORTON EX REL. WELCH V. BOARD OF EDUC., 1976-NMSC-045, 89 N.M. 470,  
553 P.2d 1277 (S. Ct. 1976)

**Cindy Lee NORTON and Jon Dwayne Norton, by their guardian  
and next friend, Virgil L. Welch, on behalf of  
themselves and as representatives for all  
students similarly enrolled in the  
elementary and secondary schools of  
the Hobbs Municipal Schools,  
Plaintiffs-Appellants  
and  
Cross-Appellees,**

**vs.**

**BOARD OF EDUCATION OF SCHOOL DISTRICT NO. 16, HOBBS  
MUNICIPAL SCHOOLS, said Board Consisting of Jack D.  
Mussett, D.A. Cochran, Dale Cooper, Mrs. W.D.  
(Pat) Richards, and Bob Whitten, and the  
Superintendent of the Hobbs  
Municipal Schools, Nelson  
Tydings,  
Defendants-Appellees and  
Cross-Appellants.**

No. 10707  
SUPREME COURT OF NEW MEXICO  
1976-NMSC-045, 89 N.M. 470, 553 P.2d 1277  
August 20, 1976

**COUNSEL**

Branch & Branch, Albuquerque, Gallegos & Welch, W.D. Welch, Tucumcari, for appellants.  
Warren F. Reynolds, Hobbs, for appellees.

**JUDGES**

McMANUS, J., wrote the opinion. OMAN, C.J., and MONTOYA, J., concur.  
**AUTHOR: MCMANUS**

**OPINION**

McMANUS, Justice.

{1} This suit was brought in the District Court of Lea County as a class action to declare

those fees collected from students by the Hobbs Municipal Schools as contrary to the Constitution of the State of New Mexico which requires in Article XII, § 1, that "[a] uniform system of free public schools sufficient for the education of, and open to, all the children of school age in the state shall be established and maintained;" to enjoin the defendant, Hobbs Municipal Schools, from collecting fees from students enrolled in the Hobbs Municipal Schools; and to require the Hobbs Municipal Schools to return to the plaintiffs and to all other students similarly situated and enrolled since August, 1972, all fees collected and paid, for those school {\*471} years since the date of the Attorney General's opinion (April 17, 1972) that advised the Hobbs Municipal Schools of the illegality of their action in collecting these fees.

{2} After a trial to the court, judgment was entered granting plaintiffs only partial relief by barring only fees for identification cards, physical education towels, and general science workbooks. Plaintiffs' request for judgment declaring all fees collected by the defendant unconstitutional, for an injunction to prohibit collection of such fees in the future, and for the return of all fees collected for the school years after the date of the Attorney General's opinion was denied. From that judgment, plaintiffs appeal. The plaintiffs allege four points of error on this appeal as follows:

I. Article XII, § 1 of the Constitution of the State of New Mexico prohibits the defendant Hobbs Municipal School from collecting any fees from the plaintiffs for course or activities reasonably related to the educational goals of the defendant Hobbs Municipal Schools since that constitutional provision mandates the establishment and maintenance of public schools like the defendant and further specifies that all such public schools shall be "free." Therefore, the trial court was in error to hold that only fees for identification cards, physical education towels and general science handbooks were barred by that language of the constitution and should instead have ruled that all fees collected by defendants were unconstitutional.

II. The trial court was in error to hold that the Plaintiffs shall not recover those fees charged in school years 1972-73, 1973-74 and 1974-75, since the evidence clearly established that the defendants Hobbs Municipal Schools and Nelson Tydings were put on notice as to the illegality of their actions in charging fees for those years and showed a lack of good faith by continuing to charge those fees from students like plaintiffs.

III. The trial court was in error to find that fees may be charged for driver's education courses since it was contemplated by the legislature that driver's education courses would be offered by the public schools and as such must be provided free.

IV. Plaintiffs' attorneys were proceeding in the public interest in litigating this matter and should therefore, be awarded attorneys fees.

{3} Article XII, § 1 of the Constitution of the State of New Mexico reads as follows:

"A uniform system of free public schools sufficient for the education of, and open to, all children of school age in the state shall be established and maintained."

{4} Plaintiffs maintain that this section prohibits a school system from making charges of any kind. In **Bond v. Public Schools of Ann Arbor School Dist.**, 383 Mich. 693, 178 N.W.2d 484 (1970), as in most other cases reported on this subject, it was held (1) that the Michigan state constitution clearly requires that elementary and secondary education be provided without cost or charge to the student, (2) that books and school supplies are an essential part of a system of free public elementary and secondary schools, and (3) that, therefore, the collection of general fees and the requirement that pupils purchase their own books and supplies were unconstitutional. We agree with this general statement, but it does not fit the exact factual situation in the case before us. In our opinion the words in our Constitution, "free public schools sufficient for the education \* \* \*," do not mean that **all** courses offered should be free. Only those courses "sufficient for the education" should be "free" in the sense of this constitutional provision. **See Paulson v. Minidoka County School District No. 331**, 93 Idaho 469, 463 P.2d 935 (1970).

{5} Thus, we hold that courses required of every student shall be without charge to {472} the student. Reasonable fees may be charged for "elective" courses. The New Mexico Board of Education shall define what are "required" or "elective" courses in the educational system of New Mexico.

{6} As to point II, supra, the evidence reflects a good faith endeavor to comply with the proposition that no fees be charged for required courses.

{7} Point III, supra, refers to driver's education. If this is a "required" course then such decision should be made by the New Mexico Board of Education, as this opinion indicates.

{8} Point IV, supra, refers to attorney's fees for appellants herein. Such attorney's fees are not provided for in the laws of New Mexico.

{9} Therefore, it is the opinion of the court that the decision of the trial court will be affirmed. The cross appeal of the Appellees will be denied.

{10} IT IS SO ORDERED.

OMAN, C.J., and MONTOYA, J., concur.