



OFFICES OF THE

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY

July 20, 1973

JOHN C. DANFORTH  
ATTORNEY GENERAL

OPINION LETTER NO. 214

Dr. Arthur L. Mallory  
Commissioner of Education  
State Department of Education  
Jefferson State Office Building  
Jefferson City, Missouri 65101

Dear Dr. Mallory:

This letter is issued in response to your request for a ruling on the authority of the State Board of Education to enter into an agreement modifying the Section 221 agreement between the State Board of Education and the Secretary of the United States Department of Health, Education, and Welfare to carry out the provisions of the Social Security Act, as amended. Both the existing Section 221 agreement and the proposed modification agreement concern the making of determinations of disability under Section 221 of the Social Security Act. The modification agreement is primarily for the purpose of carrying out the provisions of recently enacted Title XVI of the Social Security Act. You further request a ruling on your authority to sign for the State Board of Education.

As indicated in a memorandum your office received from Region VII, Department of Health, Education, and Welfare, dated May 11, 1973:

"The major thrust of the modification is the inclusion of claims filed under Title XVI and requiring a determination of disability within the jurisdiction of State agencies currently providing the disability determination service under Title II of the Social Security Act."

The modification agreement indicates that its purpose is:

Dr. Arthur L. Mallory

". . . to obtain the assistance of the State under Section 1633 in the administration of Title XVI of the Social Security Act, as amended, and to facilitate administration under Title II.

"In any respects not inconsistent with the modification, the provisions of the foregoing Section 221 agreement shall apply to claims under Title XVI by individuals within the State."

To prepare answers to your questions, we have reviewed (1) the Section 221 agreement between the State of Missouri and the Secretary of Health, Education, and Welfare, dated July 11, 1966 (superseding the original agreement, dated June 24, 1955), and all modifications thereof; (2) the supplement to the Section 221 agreement, dated June 23, 1970; (3) modification No. 1 to the Section 221 agreement; and (4) Section 161.182, RSMo 1969, as amended by House Bill No. 502, 77th General Assembly, effective June 14, 1973.<sup>1</sup>

House Bill No. 502, amending Section 161.182, RSMo 1969, reads as follows:

"161.182. 1. The state board of education shall enter into an agreement on behalf of the state with the Secretary of the U. S. Department of Health, Education and Welfare to carry out the provisions of the Federal Social Security Act, as amended, (42 U.S.C.A. 301 et seq.) relating to the making of determinations of disability under such Act.

"2. All moneys paid by the federal government to the state to carry out the agreement referred to in subsection 1 shall be deposited in the state treasury to the credit of a special fund to be

---

Footnote

1. House Bill No. 502 had an emergency clause and, therefore, became effective on the date signed by the Governor--June 14, 1973.

Dr. Arthur L. Mallory

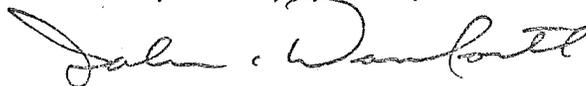
known as the 'Disability Freeze Fund', which is hereby created. All moneys in the fund shall be disbursed on warrants issued in accordance with requisitions of the state board of education."

Based on the express wording of House Bill 502, we conclude that the State Board of Education has authority to enter into an agreement to carry out the provisions of the Social Security Act, as amended. See Opinion No. 96, Wheeler, June 15, 1955.

You inquire about your authority to execute this agreement on behalf of the State Board of Education. Section 161.182 authorizes the State Board of Education, not the Commissioner of Education, to enter into agreements of this type. The Commissioner of Education is not a member of the State Board of Education nor is he generally authorized to perform those duties and responsibilities specifically granted to the State Board of Education. See Chapter 161, RSMo 1969, for general duties of the State Board of Education and the Commissioner of Education. Therefore, only the State Board of Education has the power to approve and enter into an agreement of the type referred to in Section 161.182. However, the State Board of Education could authorize you to sign this modification agreement on its behalf. Preferably this authorization should be by written resolution of the State Board of Education. A copy of the resolution should be attached to the modification agreement.

Therefore, it is the conclusion of this office that the State Board of Education is authorized to enter into an agreement modifying the existing Section 221 agreement between the Secretary of Health, Education, and Welfare and the State of Missouri to carry out the provisions of the Social Security Act, as amended. The State Board of Education may authorize the Commissioner of Education to sign this agreement on behalf of the State Board of Education.

Very truly yours,



JOHN C. DANFORTH  
Attorney General

Enclosure:  
Opinion No. 96, Wheeler, 6/15/55.