

**OPINION
56-88**

October 30, 1956 (OPINION)

EDUCATION

RE: Basis of Need Fund - Priority

Your letter of October 11, 1956, with reference to the above matter has been received.

Your question is when the fund is insufficient to pay all appropriations therefrom must the basis of need payments be given a preference over other appropriations.

Section 15-4024 of of the 1953 Supplement reads as follows:

ORDER OF PAYMENT; LIMITATION BY LEGISLATIVE APPROPRIATIONS; FRACTIONAL PAYMENTS. The allocations made in this chapter shall be a first charge and claim upon and against all moneys appropriated and coming to the fund. Should the money in the fund be insufficient to pay all appropriations therefrom, the basis of need appropriation provided from the emergency fund shall be paid in full if the full amount appropriated is required for such purposes, and such fractional payments as the moneys in the fund will permit shall be made for the other purposes specified. When fractional payments are made pursuant to this section, such payments shall constitute full payment under this chapter. If the full amount of the appropriation made under any section of this chapter is not needed for such purpose, the unexpended balance may supplement any other appropriation made under a section of this chapter which has proved to be insufficient for the purpose specified."

It seems obvious from the language of the above statute that the legislature intended to give preference to basis of need payments by making them a first charge against the appropriations from the fund and all other appropriations from the equalization fund are made in subordinate thereto.

It is, therefore, our opinion that when a shortage exists in the appropriation, then basis of need payments must be given priority over all others and if after paying in full basis of need from the appropriations a balance remains in the fund such balance shall be allocated for other purposes for which appropriation has been made and the fractional payments so made shall be deemed to be payment in full under this law.

LESLIE R. BURGUM

Attorney General