

## Opinion No. 53-5729

April 15, 1953

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

**TO:** Robert L. Thompson, Engineer Electrical Administrative Board Albuquerque, New Mexico

{\*125} I have your letter of April 7, 1953, requesting the opinion of this office as to the validity of the provision in the 1953 General Appropriation Act (Ch. 156, Laws 1953) appropriating funds for the operation of your board during the ensuing biennium.

Two questions are raised by your inquiry. First, whether there is a conflict between this appropriation and § 51-2218 of the 1941 Compilation, being a continuing appropriation to your board of all money collected by it under the provisions of Ch. 192, Laws 1939, which invalidates the appropriation made by Ch. 156, Laws 1953. Second, whether the limitation on the use of your funds is an improper subject for inclusion in the general appropriation bill by changing the concept of your board's operation from an inspection and licensing service to a taxing bureau.

Unquestionably, there is a conflict between § 51-2218 of the 1941 Compilation and Ch. 156, Laws 1953 with regard to the appropriation for the Electrical Administrative Board. In this connection, you have submitted a list of authorities holding that a general law does not repeal a special act by implication. We do not question this rule of law, but feel that has no application to the instant matter. In the first place a general appropriation act is not a general law merely by virtue of the use of the descriptive term "general", but is rather a conglomerate of special acts, each item dealing with a specific matter. In the second place, the cases which you submitted, together with other rulings, recognize that the rule mentioned is subject to the paramount question of determining the legislative intent, and is only to be used when the intention of the legislature is not clear from a reading of the acts in question. No such problem is presented here, for the legislature unequivocally stated its intention that the Electrical Administrative Board is to use only \$ 50,000.00 of the revenues it collects each year for its operations.

We feel, therefore that the conflict between § 51-2218 of the 1941 Compilation and Ch. 156, Laws 1953 does not invalidate the latter.

Your second inquiry can be sustained only if Ch. 156, Laws 1953 does not in fact change the board from one of tax collection. Your contention is apparently based upon the provision in Ch. 156, Laws 1953, stating that all revenues collected by the board in excess of the amount appropriated shall revert to the general fund of the state at the close of each fiscal year. Even if it could be said, which we doubt, that such a provision transforms a regulatory agency into a revenue agency, this provision is in substantial conformity with § 51-2218 of the 1941 Compilation, which requires all revenues of the board in excess of amounts necessary to meet anticipated deficits during the following

year to be paid into the general fund at the close of each fiscal year. Thus, if the fact that excess collections of a licensing board go to the general fund of the state constitutes such board a revenue producing agency, then the Electrical Administrative Board has been of this type since its creation, and not by virtue of Ch. 156, Laws 1953.

From the foregoing, it is our opinion that Ch. 156, Laws 1953, is valid insofar as it pertains to the Electrical Administrative Board, and that your appropriation for the ensuing {\*126} biennium will be as set forth in that act.

By: C. C. McCulloh

Assist. Attorney General