

Opinion No. 53-5763

June 11, 1953

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. Alex Armijo, Director Division of Budgets & Finance State Department of Public Health Santa Fe, New Mexico

{*163} In your letter dated June 9, 1953, you request an opinion concerning the salary of the Director of the New Mexico Department of Public Health for the ensuing year, in view of §§ 10 and 20 of the Appropriations Act, being House Bill No. 196, which is Ch. 156, Laws of 1953.

Section 10 of the Appropriations Act provides, in part, as follows:

"No additional compensation as salary shall be paid out of any fund herein appropriated for contingent expenses to any state officer, assistant or employee whose salary is fixed by a specific appropriation herein unless otherwise provided by this act or by special act; provided that the State Board of Finance is authorized, in its discretion, to make transfers of funds from one appropriated item to another."

Section 20 of the 1953 Appropriations Act provides as follows:

"The salaries for the officers, assistants and employees enumerated, and as provided in Chapter 227 of the Session Laws of 1951 or as any of such salaries may have been adjusted prior to January 1, 1953, with the exception of salaries for which there are specific appropriations in this act, shall be paid from the appropriations for salary purposes {*164} made in this act for the department or agency in which such officer, assistant or employee is employed."

Although your request did not refer to § 13 of the 1953 Appropriations Act we deem this section to be important in determining the question and quote the same, as follows:

"Every state office, department, institution, commission or board shall annually make such financial or other report as the Governor shall require covering the preceding fiscal year. Every state office, department, institution, commission or board shall prepare a detailed budget for the ensuing fiscal year which shall be submitted to the State Budget Director on or before May 15, and by him, submitted to the Governor. Such budget shall be subject to revision by the Governor, and when approved by the Governor and the State Board of Finance, shall be final and binding in determining the expenditures for such fiscal year; provided that the total amounts appropriated in this act may not be reduced, except as provided in Section 17 hereof; and provided further, that upon written request by any state officer, department head or any other institution, commission or board operating on a budget, the Governor or the State Board of Finance may make revisions and such changes as are requested."

We do not feel that § 10 would limit the right of the State Department of Public Health to increase the salary of the Director for the coming year, subject to approval of the budget for that purpose by the Governor and State Board of Finance.

Section 20 of the 1953 Appropriations Act in effect appropriates the specific amounts for salaries of officers enumerated in Ch. 227, Laws of 1951, as the same existed or were adjusted by the Board of Finance prior to January 1, 1953, where the salaries were specifically set out in Ch. 227, Laws of 1951, as in the case of the Director of the Department of Public Health in the sum of \$ 9,000.00. Section 20 amounts to specific appropriation of that amount in the 1953 act.

In view of the provisions of § 13 of the 1953 act, which must be given the same weight as other sections of the act and interpreted consistently with other sections of the act, it is felt that § 13 is of primary importance in answering your question concerning whether the salary of the Director may be increased from \$ 9,000.00 to \$ 11,000.00 per annum from the ensuing year. Under § 13 your budget submitted to the Governor may request the additional salary and if the Governor and the Board of Finance approve the additional salary the same may be legally paid out of the lump sum of appropriations for salaries appearing in the 1953 Appropriations Act.

By: C. C. McCulloh

Assist. Attorney General