

Opinion No. 56-6561

December 20, 1956

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. D. M. Smith, Jr., State Comptroller, P. O. Box 1359, Santa Fe, New Mexico

We are in receipt of your request for an opinion dated December 14, in regard to item (5) in the Governor's appropriation for the forty-fifth fiscal year, Chapter 287, Section 1, of the 1955 Session Laws, together with the proviso at the end of such section, which reads as follows:

"Provided, that item (4) for Contingent and Other Expenses shall be disbursed by warrant of the State Auditor on the basis of one-twelfth each month to the Governor, and that items (1), (2), (3) and (5) shall be paid on vouchers by the Governor to the State Auditor."

The language in that proviso clearly intends and permits the Governor to draw vouchers on the named items as he sees fit. The restriction which you are concerned with, to-wit, the expenditure of more than one-half of the budgetary allocation in an election year, would clearly not apply to the capital outlay item, as such item was not intended by the Legislature to be restricted to a one-half expenditure. The expenditure of a capital outlay item or of any nonrecurring expenditure could not be thus restricted in any of the budgets, as the restriction of such items would lead to a ridiculous conclusion. For instance, suppose the Legislation of the State of New Mexico budgeted for a building or an extremely large and expensive piece of equipment. To hold that only one-half of that item could be expended in the first six months of the election year would be to hold that the appropriation was only for the last six months and not for the first six months. We find no indication that this was the intention of the Legislature.

It is, therefore, the opinion of this office that the item "capital outlay" is not restricted to a one-half expenditure during the first half of a fiscal year during an election year, but may be spent when properly vouchered at any time during the entire fiscal year.

We sincerely hope this answers your inquiry.

By: Fred M. Standley

Assistant Attorney General