

## **Opinion No. 57-107**

May 22, 1957

**BY:** OPINION OF FRED M. STANDLEY, Attorney General Robert F. Pyatt, Assistant Attorney General

**TO:** Mr. Edward M. Hartman, State Comptroller, Santa Fe, New Mexico

### **QUESTIONS**

#### QUESTIONS

Will there be any restrictions upon counties as to transfers from sinking, interest, road and building funds after the effective date of Laws 1957, Chapter 250, which, among other things, will repeal §§ 11-1-20 and 11-1-21, N.M.S.A., 1953 Compilation? School finances are excluded from this question.

#### CONCLUSION

Certain restrictions will continue.

### **OPINION**

#### ANALYSIS

Laws 1957, Chapter 250, not yet in effect, among other things, repealed §§ 11-1-20 and 11-1-21. Section 20 prohibited the State Finance Board from authorizing or permitting the use of funds in any sinking fund, interest fund, road fund or building fund other than for the specific purpose for which the funds were created. Your question arises out of the specific repeal of this provision by Laws 1957, Chapter 250. You will observe that the question herein answered is considerably more limited than was the scope of the questions propounded in your request for this opinion, dated May 6, 1957. However, Mr. Ray Kersting of your office advised us that you were only concerned with county funds, excluding school finances, and this opinion is limited accordingly.

After a rather extensive search of the statutes, we concluded that there will remain various restrictions upon the transfer by counties of the funds in question, notwithstanding the express repeal of § 11-1-20, *supra*.

When the Board of County Commissioners issues refunding bonds under the provisions of §§ 11-6-23 to 33, N.M.S.A., 1953 Compilation, annual taxes must be levied to produce one year's interest and the annual installment of principal due in the next ensuing year. The proceeds of such taxes shall be kept in a special fund to be used only for the payment of interest on and for the redemption of such bonds. Section 11-6-27, N.M.S.A., 1953 Compilation.

The proceeds of bonds issued by counties for the construction and repair of roads and bridges, pursuant to § 55-5-1, et seq., shall be placed in the county road fund, and said proceeds shall be used exclusively for the construction and repair of roads and bridges within the county. Section 55-5-7.

Nor may any moneys be transferred from the county road and bridge fund. Section 55-3-11, the pertinent portion of which is as follows:

"It shall be unlawful to transfer any moneys from the county road and bridge fund to any other county fund. The county treasurer shall be liable on his official bond for any such transfer of (or) transfers."

See also § 55-3-9.

Boards of County Commissioners are authorized to levy and collect a special tax for the purpose of making needed repairs on the county court house and the county jail. The product of the levy shall be kept separate in the court house repair fund, which shall not be used except as above indicated. Section 15-47-5.

All taxes collected to pay the principal and interest on bonds issued for building a court house, jail, bridge, hospital or public library shall be kept by the County Treasurer as a special fund, to be used for the payment of interest on and for redemption of such bonds only. Section 15-49-17. The proceeds of such bonds shall only be applied toward the purpose for which the bonds were issued, or for their redemption. Section 15-49-19.

The county flood fund shall only be subject to expenditures for the purposes set forth in the county flood law and shall not be transferred to any other fund, account or purpose. Section 15-50-2. See also § 15-50-9. In addition, the emergency district flood fund shall be used only for the purposes of the emergency flood district act (§ 15-50-10 to 17) by the County Treasurer. Section 15-50-16.

No moneys may be transferred from the county election fund for any purpose except to pay election expenses required by law to be paid by counties. Section 15-51-9.

Your attention is directed to § 15-48-10, N.M.S.A., 1953 Compilation, 1955 Supplement, requiring County Commissioners to pay over to the board of trustees of the county hospital all moneys realized through tax levy, or otherwise, for the operation of the hospital. And the trustees shall annually account for the receipt and expenditure of said funds. While the statute does not in express language enjoin use of such fund for any other than hospital purposes, it would seem to be clearly implied that this is so, especially by reason of the fact that such moneys collected are to be paid over by the commissioners to the trustees and from the fact that the latter are required to account strictly for the same.

From the very nature of the opinion requested by you, we have perforce given an opinion of a rather general nature. As specific and related problems arise, you should, of course, consult our office in each instance where you have any doubt on the matter.