

Opinion No. 57-141

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BY: OPINION OF FRED M. STANDLEY, Attorney General Paul L. Billhmer, Assistant Attorney General

TO: Mr. Frederic G. Comstock, State Budget Director, Santa Fe, New Mexico

QUESTIONS

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Can a department or agency receiving a General Fund appropriation use any additional revenue coming to such agency or department by increasing their budget when such revenue is not a result of existing laws but is in the nature of a windfall?

CONCLUSION

No.

OPINION

ANALYSIS

We understand that this problem arises with reference to the first sentence of § 6, Chapter 235, Laws 1957, which reads as follows:

"All revenues not otherwise appropriated in this act are hereby appropriated under existing laws, subject to established budgetary procedure."

The question, fundamentally, is whether this sentence allows the expenditure of revenues which come into the various departments receiving General Fund appropriations when this revenue is not the result of existing statutes.

We are of the opinion that the above quoted section does not confer authority for the expenditures of such funds. The purpose of this sentence was to provide for the appropriation of all funds which various departments or agencies may have received which were already appropriated under the existing laws and which may not have been provided for by the General Appropriations Act. This provision had as its purpose the insurance that departments and agencies with revenues from sources which also authorized expenditures of such revenues would not lose the use of such funds because of a failure to have an appropriation of this revenue in the General Appropriations Act.

This provision was not meant to cover the expenditure of revenues which were not previously contemplated by the departments or agencies which received the same. These are in the nature of windfalls and thus not within the contemplation of this provision of the law. This money could not be used by such departments or agencies because of Article IV, Section 30 of the Constitution, which requires an appropriation before money can be spent. Inasmuch as this money has not been appropriated by the Legislature, it cannot be used by such departments or agencies.