

Opinion No. 57-165

July 12, 1957

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

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

QUESTIONS

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1. Does the Provision in the General Appropriation Act, which provides for the reversion of the surplus funds of the various administrative boards, supersede specific provisions in the statutes creating such boards, which provide that the respective board funds shall not revert?
2. Does the provision of § 5, Ch. 235, L. 1957, mean that all balances in the hands of the board at the end of the licensing year must revert?

CONCLUSIONS

1. Yes.
2. No. See Opinion.

OPINION

ANALYSIS

1. Answering the first question, two cases dispose of the matter specifically and completely.

State v. State Board of Finance, 59 N.M. 121.

New Mexico State Board of Public Accountancy v. Joseph B. Grant, State Treasurer, 61 N.M. 287.

In the first case, the Supreme Court held that general appropriations acts, providing that funds remaining with the various administrative boards revert to the General Fund, are valid exercises of the legislative power in all instances save where they so reduce the appropriation of the administrative board as to virtually put it out of business. Inasmuch as the provision of the General Appropriation Act in question provides for the reversion of the "surplus funds", this single exception does not concern us here.

The second case affirms the propositions in issue in the first case and serves to cement the position of the Supreme Court.

Hence, the affirmative answer to the question.

2. We believe that there will be funds available for the 46th Fiscal Year because § 5 (5), Ch. 287, L. 1955, provided that there was to be only a reversion of funds after provision for the next fiscal year had been made. In other words, no funds were to revert until there were sufficient funds for the next fiscal year. This would mean that the named boards could provide for the appropriation made by § 5, Ch. 235, L. 1957, before there would be any reversion on June 30, 1957. This will be subject to the provision in § 5, Ch. 235, L. 1957, already above-quoted, pertaining to the reversion of surplus funds under the new Appropriation Act.

Under the 1957 Appropriation Act, the funds are to revert at the end of the licensing year. The Legislature intended that these boards were not to accumulate any surplus. In order to insure this, the provision calling for a reversion of funds was changed so that the reversion was to take place at the end of the licensing year. In other words, the cash balances to revert are all monies collected for the prior licensing year and not expended. This would not include any fund collected during one licensing year for a license for the next. To include these funds in the cash balance would leave the boards without operating funds. The Legislature did not intend to curtail the operation of the boards.

It is, thus, that we conclude that licensing fees collected in advance should not be included in the cash balances which are to revert under the provisions of this particular section of the 1957 Appropriations Act.