

Opinion No. 57-187

July 30, 1957

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

TO: Robert D. Castner, Director, Business Management, N.M. Dept. of Public Health, Santa Fe, New Mexico

QUESTIONS

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1. Is the \$ 43,500 anticipated receipts from the Special Health Levy Act (same being Chapter 39, Session Laws of 1937) a special appropriation over and above the amount set out in the General Appropriations Act for the Department of Public Health, Laws 1957, Chapter 235, p. 539?
2. Does the Governor have the power to make budgetary reductions under Laws 1957 Chapter 235, Section 12, other than as outlined in Section 15 thereof?
3. Is the \$ 40,000 from the "State Hospital Survey and Construction Act" a special annual appropriation over and beyond the amount set out in the General Appropriation Act for the Department of Public Health?
4. If so, and there is a budgetary reduction in the general appropriation to the Department of Public Health, would the acceptance of federal funds as provided in Public Law No. 725, as Amended, be legally questionable?
5. Is the \$ 75,000 appropriated in Laws 1957, Chapter 122 for the "Sanitary Projects Act" a special appropriation over and above the amount in the General Appropriation Act for 1957?
6. If so, and there is a budgetary reduction in like amount (\$ 75,000) would the Department of Public Health be liable for expending \$ 75,000 in accordance with Chapter 122?
7. Does the budget director have the authority to reduce by the sum of \$ 115,000 the Department of Public Health's operating budget for the fiscal year 1957-1958?
8. What appropriations are available to the Department of Public Health for budgetary purposes for the 46th fiscal year?

CONCLUSIONS

1. No.
2. See opinion.
3. Yes.
4. See opinion.
5. Yes.
6. See opinion
7. No.
8. See opinion.

OPINION

ANALYSIS

Laws 1937, Chapter 39, Section 8, reads as follows:

"All salaries and expenses incurred by the Department of Public Health shall be paid by the State Treasurer upon warrants of the State Auditor, supported by vouchers of the Director of Public Health.

"The county commissioners of the several counties shall annually make a levy not in excess of one-twentieth of a mill as certified by the state tax commission, the proceeds of which shall be forwarded to the state treasurer to be credited to the State Board of Public Health for the protection of the public health, and which shall be known as the Special Health Levy Fund."

Reading the entire chapter convinces us that it is not an appropriation. All that the quoted Section 8 purports to do is to authorize a levy and create a special fund, but there is a clear absence of any language authorizing payment out of such fund, and we thus hold that there is an absence of an appropriation. Our conclusion is also buttressed by the fact that the title to Chapter 39 does not indicate in any manner that the Legislature was making an appropriation. While of course not conclusive, the title to an act is an aid in determining the legislative intent. *State vs. Moore*, 40 N.M. 344, 59 P.2d 902. Furthermore, our conclusion is not altered by the language of § 12-1-11, N.M.S.A., 1953 Comp., reading as follows: -

"To effectuate the provisions of this act all records, physical properties and personnel of the bureau of public health division of the state department of public welfare as it has heretofore existed are hereby transferred to the state department created hereby. All moneys, funds and appropriations now credited to the account of the bureau of public

health of the state department of public welfare as it has heretofore existed shall be transferred to the credit of the state department created by this act and all of said existing appropriations and funds so transferred are hereby appropriated and made available to said state department." -

since that apparently relates to unexpended appropriations, and not to new funds as created by Laws 1937, Chapter 39, Section 8, supra, but unappropriated.

Laws 1937, Chapter 39, Section 8 was allegedly amended by Laws 1957, Chapter 11. However, it is our opinion that Laws 1957, Chapter 11, may be disregarded inasmuch as the same did not contain an enacting clause as is clearly required by Article 4, Section 15, Constitution of New Mexico. Since an unconstitutional enactment is inoperative and ineffective as though never passed, *Town of Las Cruces vs. El Paso Industries Inc.*, 43 N.M. 304, 92 P. 2d 985, Laws 1957, Chapter 11 is ineffective to amend Laws 1937, Chapter 39, Section 8.

Turning to your second question, the first paragraph of § 12, Chapter 235, Laws 1957, reads as follows:

"Every state office, department, institution, commission or board shall prepare a detailed budget for the ensuing fiscal year which shall be submitted to the budget division on or before May 15 and then submitted to the governor. Such budget shall be subject to revision by the governor in accordance with existing statutes, and when approved by the governor 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 15 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 and the budget division may make revisions and such changes as are requested. Appropriations made for salaries shall not be increased except as may be allowed by salary adjustments in accordance with the personnel director's schedules as authorized and approved by the department of finance and administration." (Emphasis added.)

Section 15 thereof reads as follows:

"The department of finance and administration with the approval of the state board of finance is hereby authorized to reduce all annual operating budgets made herein not to exceed fifteen percent, except interest and principal payments on debts and salaries of elected state officials."

We hold that the authority to make budgetary reductions is confined solely to Section 15 aforesaid, and is limited by the terms thereof. Nor does Laws 1957, Chapter 253, Section 8, which is as follows:

"Each state agency shall annually on or before June 1 submit to the state budget division a budget for the ensuing fiscal year, in such form as may be prescribed by the

division and containing such information concerning the anticipated receipts, expenditures and balances on hand as may be prescribed by law or by the state budget division. Such budget shall be subject to the approval of the state budget division and no expenditures shall be made by any state agency for the fiscal year covered by said budget until the budget shall have been approved by the state budget division, provided that any action by the division shall be subject to review and modification by the governor."

give such authority to the fiscal officers of this State.

It is our opinion that the answer to your third question is in the affirmative. Laws 1947, Chapter 202, Section 19 was a special annual appropriation. It was amended by Laws 1955, Chapter 196, Section 19 to read as follows:

"For the purposes of administering the provisions of this act there is hereby **appropriated annually** from the State General Fund the sum of ten thousand dollars (\$ 10,000) to provide for a director of the hospital facilities division and the necessary clerical assistance and further there is **appropriated annually** from the State General Fund the sum of thirty thousand dollars (\$ 30,000) to be made available for the purposes of administering this act only after the receipt of federal funds appropriated by Congress under the provisions of the federal act." (Emphasis supplied.)

By its very terms, the quoted provision is a continuing annual appropriation, Opinion of the Attorney General No. 57-99, and is not affected by Laws 1957, Chapter 235, Section 17, reading as follows:

"If any items included in **this general appropriations act** are appropriated in special acts of the **twenty-third legislature**, the appropriations in said special acts of the twenty-third legislature shall apply and such appropriations in this general appropriations act, whether of the same amounts, or larger or smaller amounts, shall be null and void." (Emphasis supplied.)

since the latter only pertains to acts of the 23rd Legislature and not the Legislature's enacting Laws 1947, Chapter 202, Section 19, or Laws 1955, Chapter 196, Section 19.

In answer to your fourth question, we do not see how a reduction of \$ 40,000 in the general appropriation to your department in turn effects a like reduction of the appropriation granted you by Laws 1955, Chapter 196, Section 19, nor do we see how a \$ 40,000 reduction in the funds granted to you by the general appropriations bill would in any way prejudice receipt of funds from the federal government pursuant to Public Law 725 as amended. By Public Law 725 as amended, we assume that you have reference to Title 42, U.S.C., Section 291 et seq. Under Section 291 c the State gets thirty-three and a third percent of its expenditures; and under Section 291 f (e) up to sixty-six and two-thirds percent of the construction costs of the projects. See also Sections 291 g, 291 i, 291 r, and 291 t. Your attention is directed to 42 U.S.C., Section 291 h (d) requiring that federal funds received for construction of an approved project

are only to be used for that purpose. Furthermore, Section 291 j (a) requires "adequate" state funds for the administration of the state plan, else federal funds may be withheld. We mention this latter only in passing, as this office is not empowered to determine what are "adequate" state funds.

In answer to your 5th question, Laws 1957, Chapter 122, Section 20 appropriates \$ 150,000 for the 46th and 47th fiscal years.

Section 17 of Chapter 235, Laws 1957, reads as follows:

If any items included in this general appropriations act are appropriated in special acts of the twenty-third legislature, the appropriations in said special acts of the twenty-third legislature shall apply and such appropriations in this general appropriations act, whether of the same amounts, or larger or smaller amounts, shall be null and void. (Emphasis ours.)

It then becomes important to ascertain if "any items" in Chapter 235 are included in Chapter 122. In Chapter 235, Section 1, at page 539, we find appropriated to the Department of Public Health, for each of the 46th and 47th fiscal years \$ 736,000 for salaries and operating expenses, and in addition thereto for each of the fiscal years involved \$ 40,000 for automobiles. Turning to Chapter 122, we find in Section 3 thereof that its purpose is to improve public health by means of installation of sanitary and sewage facilities in unincorporated rural communities, and in Section 4 thereof, it is apparent that the policy of the statute is to be effected through construction projects. These projects can hardly be said to be salaries, or operating expenses, of the Department of Public Health, and, accordingly, no items included in Chapter 235 are included in Chapter 122. Hence, the answer is in the affirmative. Appropriation laws, like other statutes, are to be construed together and reconciled, wherever possible, especially when enacted at the same session of the Legislature. Opinion of the Attorney General No. 57-91.

Your sixth question contains a basic flaw in that it apparently assumes that any reduction of your appropriations as above set out in Chapter 235 would in turn reduce the appropriation of \$ 150,000 under Chapter 122 for the 46th and 47th fiscal years. This calls for an examination of Chapter 235, Section 15, Laws of 1957, reading as follows:

"The department of finance and administration with the approval of the state board of finance is hereby authorized to reduce all **annual operating budgets made herein not to exceed fifteen percent**, except interest and principal payments on debts and salaries of elected state officials." (Emphasis ours.)

Firstly, budget reduction authority is limited by the language ". . . made herein . . ." to funds appropriated by Chapter 235, and then not more than fifteen percent of the total as authorized by said Chapter 235; Secondly, Chapter 235, in respect to this question, is further limited by the language ". . . annual operating budgets . . ." which could not

apply to the projects contemplated by Chapter 122. We have no hesitation in unequivocally holding that the fiscal authorities of New Mexico have no authority over reductions of appropriations except as specifically authorized and limited by Chapter 235, Section 15, and then only as to operating budgets made by Chapter 235, and then not to exceed fifteen percent. Having been authorized to expend the \$ 150,000 appropriation in accordance with Chapter 122, Laws 1957, and the sum being distinctly specified, and the object being distinctly specified, you incur no automatic liability in acting in full accordance with Chapter 122. Furthermore, we wish to add that our holding here is equally applicable to the continuing appropriation created by Laws 1955, Chapter 196, Section 19.

In answer to your seventh question, the reduction authority under Laws 1957, Chapter 235, Section 15, is not that of the Governor or of the Budget Director, but of the Department of Finance and Administration, conditioned upon Board of Finance approval. Be that as it may, the reduction is not to be more, in any event, than fifteen percent of the Department's **operating budget** as such is derived from Chapter 235. Firstly, we begin by excluding the \$ 40,000 item for automobiles as not being an operating budget item, leaving \$ 736,000. Fifteen percent of the latter figure is \$ 110,400. This last mentioned sum, being derived only from Chapter 235 and **not** from any other act making an appropriation, is the maximum extent for budget reduction under any circumstances.

Your eighth question is answered as follows:

\$ 40,000 by virtue of Laws 1955, Chapter 196, Section 19; \$ 75,000 by virtue of Laws 1957, Chapter 122, \$ 736,000 and \$ 40,000 by virtue of Laws 1957, Chapter 235, Section 1, page 539, budgetary reduction authority being limited as aforesaid.