

Opinion No. 57-88

May 7, 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. To what budgets do the provisions of Section 6-C of Chap. 235, Laws 1957, apply?
2. Do the provisions of Section 6-C of Chap. 235, Laws 1957, apply to the budgets which receive Federal funds where Federal law prohibits the expenditure of Federal funds for general administrative overhead?
3. How shall the provisions of Section 6-C of Chap. 235, Laws 1957, be applied to the various budgets in view of the diverse methods of submission of this item in budget request?

CONCLUSIONS

1. Budgets of all departments, commissions, boards and agencies, except those set forth in Section 5 of Chap. 235, Laws 1957.
2. No.
3. As in Opinion No. 6157.

OPINION

ANALYSIS

Question 1:

Section 6-C, Chap. 235, Laws 1957, reads as follows:

"C. There shall be included in each budget of departments, commissions, board, and agencies, exclusive of the state highway department and the state land office, and department of game and fish, an item for 'general administrative overhead' expense equal to five percent of the total budget; provided that any department which makes or has made other arrangements for paying administrative overhead costs shall be

excepted from this provision, if approved by the department of finance and administration. --"

From the plain meaning of this language, it follows that the legislature intended that all of the 'departments, commissions, boards and agencies' which were covered by the legislative appropriations, including those mentioned in the first four sections of this chapter, were to comply with the provisions of this subsection unless they could come within the exceptions. There are two groups included in the exception. First, the State Highway Department, State Land Office, and the Department of Game and Fish are specifically excluded from this provision. Second, there is excluded 'any department which makes or has made other arrangements for paying administrative overhead costs,' if the approval for the arrangements is made by the department and finance administration. This second group includes only departments which are allowed by the Department of Finance and administration to make their own arrangements for payment of administrative overhead expenses.

It is to be noted that there is a special provision which applies to the boards named in Section 5 of Chap. 235, inasmuch as this Section 5 specifically provides for a five percent payment by the named boards to the General Fund. Since this has been standard for a number of appropriation acts, Section 6-C has no application to these boards named in Section 5.

Question 2:

In order to determine the answer to this question, we believe that it is necessary to do more than just read the particular wording of Section 6-C, *supra*. If this section alone is considered it would appear that the total budget is considered as the base for the five percent for administrative overhead charge without regard to the source of such funds. Where there is a question as to the application of a law, it is necessary to consider the statute as a whole, and the construction will not be made which will prejudice the public interest. **State v. Llewellyn**, 23 N.M. 43, 167 P. 414.

Without a doubt the legislature intended to accept all benefits made by Federal grants. (See provisions of this Chap. 235, under Section 1, dealing with Department of Public Health. See also the provisions of Section 4 of this act, which deal with the Department of Education and other educational types of organizations.) The legislature also intended to secure maximum benefits from Federal grants.

We, therefore, would conclude that if we place a construction on Section 6-C so that it includes all funds regardless of source and such construction, because of Federal restrictions, would preclude the securing of such funds, we would do violence to the intent of the legislature. This construction would certainly not be in the public interest. Therefore, we conclude that this Section 6-C does not apply to items of budgets whose source is Federal grants, which are conditioned upon such grants not being spent for administrative overhead. We do not mean to imply that this will apply to all Federal

grants. It only applies to those Federal grants which prohibit the use of any of the grant for administrative expense.

Question 3:

It is plain from an examination of the budget submitted by the Governor that there was no uniformity as to the method by which this five percent was included by the various departments, commissions, boards and agencies. For example, some did not make any attempt to include this five percent in the submitted budget. Some made a line item showing the need for this sum but did not either add it into the amount requested or add it in the amounts to be expended. Some included this five percent as an item in the budget under Source of Revenue and as an expenditure. Most of the budgets which operate on earmarked funds included this as an item of expenditure. There may be other variations as to methods used to provide for this provision for administrative overhead, but this is sufficient to show that there is some confusion.

Instructions were given to all departments, boards, commissions and agencies to include such item in the budget requests, by the State Budget Director in a letter dated September 21, 1956.

In view of the above outlined confusion, we believe that Opinion No. 6157 answers the present question and the reasoning in that Opinion should govern, namely that this provision is an additional appropriation for each department covered thereby.

The legislature was aware of this Opinion and its operation. The budgets with but little variation were identical of the budgets for the preceding year, which had operated under Opinion No. 6157. We believe that the legislature thus intended to accept the construction of this provision as outlined in Opinion No. 6157.