

Opinion No. 58-08

January 17, 1958

BY: OPINION OF FRED M. STANDLEY, Attorney General Alfred P. Whittaker,
Assistant Attorney General

TO: State Board of Public Welfare, Public Welfare Building, Santa Fe, New Mexico

QUESTION

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May the State Board of Public Welfare expend for one purpose funds originally budgeted for another purpose in the following situations:

- (a) When a transfer of funds is to be made from one line item to another within a category?
- (b) When a transfer of funds is to be made from a line item in one category to a line item in another category?
- (c) When a transfer of surplus funds is to be made?

CONCLUSION

Yes, subject to approval by the Governor and the Budget Division.

OPINION

ANALYSIS

It is axiomatic that under Article IV of Section 30 of the Constitution of New Mexico money may be paid out of the treasury only upon appropriation made by the Legislature, and that every appropriation law must distinctly specify the sum appropriated and the object to which it is to be applied. As this constitutional provision has been interpreted by our Supreme Court, both of these requirements must be met to constitute a valid appropriation. See **Gamble v. Velarde** 36 N.M. 262, 13 P. 2d 559 (1932).

Prior to 1957, the Department of Public Welfare utilized funds made available to it under various specific taxing statutes. See, e.g., Section 46-8-6, N.M.S.A., 1953, prior to its amendment by Chapter 21, Laws of 1957. By virtue of the session law cited and other similar session laws, these special funds formerly made directly available to the Department of Public Welfare were transferred to the State's General Fund.

The 1957 Legislature, in the General Appropriations Act, Chapter 235, in Section 1 thereof, for the first time made a direct appropriation to the department from the State General Fund for the purpose specified, in an amount likewise specified. The appropriation made is subject to several provisions appearing at pp 546 through 548 of the 1957 Session Laws. Among these provisions is the proviso that "the balances of state funds shall not revert at the end of the forty-fifth, forty-sixth or forty-seventh fiscal years."

Under the circumstances recited, it is our opinion that the transfer of budgeted line item funds as contemplated in the inquiry can be accomplished provided that the Governor and the State Budget Division approve the same upon written request by the Board of Public Welfare, in accordance with Section 12 of Chapter 235, Laws of 1957.

The provision referred to provides for submission of a detailed budget to the Budget Division and the approval thereof by the Governor, making the same final and binding for the ensuing fiscal year, and then provides in relevant part:

"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."

In our opinion the Board of Public Welfare may properly obtain authorization, by following the procedure indicated, for the transfer of funds from one line item to another within a category, and also for the transfer of funds from a line item in one category to another line item in another category, subject to the exception stated as to salaries. In so stating, it is our understanding that the term "category" is used to designate a general classification of assistance rendered by the Welfare Department such as Old Age Assistance, Assistance to the Needy Blind, etc.

In view of the explicit provision in the General Appropriations Act that any balance of state funds in the department's hands at the end of the fiscal year shall not revert to the General Fund at the end of the fiscal year during this biennium, it is our opinion that the State Board of Public Welfare may also accomplish the transfer of surplus funds from one line item to another either within the same category or from one category to another, in accordance with the procedure outlined in Section 12, Chapter 235, Laws of 1957. In so concluding, we act upon our understanding that the term "surplus fund", as used in your inquiry relates to the situation in which the Department has in its hands at the end of the fiscal year a balance from funds available to it during the preceding fiscal year, and not specifically included in line items in the budget upon which the appropriation for the ensuing fiscal year is based. In such a situation it is our view that the legislature, in the General Appropriations Act, by explicitly providing against the reversion of such moneys to the General Fund, provided and intended that such

balance should be used by the department in the performance of its functions in the ensuing fiscal year.

Accordingly, it is our opinion that the transfer of such surplus funds from one line item to another may be accomplished in accordance with the procedure outlined in Section 12 of the General Appropriations Act.

This office has previously upheld the transfer of funds between line items in Opinions Nos. 6227 issued July 13, 1955 and 6355 issued January 17, 1956, relating to other state agencies.