

Opinion No. 58-121

June 11, 1958

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

TO: Mr. Lee C. Robinson, Superintendent of State Parks, Santa Fe, New Mexico

QUESTION

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Is the State Park fund a revolving fund or do unused portions of the money to the credit of the Department revert to the General Fund at the end of each fiscal year?

CONCLUSION

To the extent of general fund appropriations, reversion will occur at the close of this fiscal year.

OPINION

ANALYSIS

You have cited Section 4-9-18, N.M.S.A., 1953 Compilation to substantiate your position that State Park Commission funds do not revert. Regretfully, we cannot concur in this in all respects.

At any rate, the last cited section provides:

"All moneys derived from the operation of state parks or from gifts, donations, bequests or endowments **or appropriated for state park purposes by the legislature**, or acquired from any other source whatsoever, shall be covered into a fund to be known as state park fund, **which shall be a revolving fund, and no part of which shall at any time or in any event revert** or be transferred to general or other state funds; and said funds shall be used solely for the purpose of acquiring, developing, operating and maintaining of state parks and maintenance, operation and expenditures of the office of the state park commission and the payment of traveling expenses and salaries of officers, park custodians and employees. All vouchers for expenditures from the state park fund shall be prepared by the superintendent of state parks and approved by the governor of the state of New Mexico, as a member of the state park commission."
(Emphasis ours)

Standing alone, the statute sustains your view, but others must be carefully considered:

Laws 1957, Chapter 235, Section 6 A, p. 571, also cited by you, states:

"There is also hereby appropriated to the state general fund any balance remaining or accruing to the interest and sinking funds of public defense certificates, provided all such certificates have been retired. **Any balance remaining to the credit of any state board, commission or other agency shall also be covered into the state general fund at the end of each fiscal year appropriated for in this act unless otherwise provided by law.** Provided that this paragraph shall not apply to any state department participating with the federal government in any agreement whereby the federal government provides matching funds, and the grant of such funds to the department would be impaired by the requirements of this paragraph." (Emphasis ours)

We believe Section 4-9-18 does satisfy the ". . . unless otherwise provided by law" proviso; hence, Section 6 A in and of itself does not preclude the revolving fund status of your Commission.

It is when we reach Laws 1957, Chapter 235, Section 11, p. 574, providing:

"General Fund appropriations made for a specific fiscal year may not be used for paying obligations of any other fiscal year, except upon approval of the department of finance and administration and the state board of finance, **and any unused balance of general fund appropriations remaining to the credit of any state office or department at the close of a fiscal year shall revert to the state general fund** and be used to meet appropriations for the succeeding fiscal year," (Emphasis ours)

that the difficulty is reached. To the extent of **general fund appropriations**, reversion is provided as in Section 6 A, but unlike the latter, there is no saving proviso. Hence, those funds of your Commission derived by virtue of general fund appropriations will revert at the close of the fiscal year; funds derived from other sources (gifts, endowments, etc.) will not revert.

We hasten to add this is so because of the conflict between Section 4-9-18 and Section 11, insofar as general fund appropriations are concerned, Section 11, being the statute subsequent in point of time. This is not to say however that **repeal** by implication has occurred. Rather, to the extent of the conflict and no more, Section 11 **supersedes** Section 4-9-18 for the biennium during which Laws 1957, Ch. 235 is in effect. Opinion of the Attorney General No. 4917, rendered July 1, 1946.

You may well ask why we give Section 11 greater weight and effect than Section 6A. An explanation is due you. Section 11 deals, insofar as fund reversion is concerned, with general fund appropriations alone; whereas Section 6 A deals, insofar as fund reversion is concerned, with funds in general irrespective of source. Consistent with the holding in **Varney v. City of Albuquerque** 40 N.M. 90, 55 P. 2d 40 that a statute dealing with a particular subject matter controls over a general statute which does not refer to the same subject although broad enough to cover it, we hold Section 11 controls the reversion features, but only insofar as its express terms allow as we discussed above.