

Opinion No. 58-134

June 20, 1958

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

TO: K. D. Spiller, Chief, Budget Division, Department of Finance & Administration, Santa Fe, New Mexico

QUESTION

QUESTIONS

I. Are the following agencies listed in Section 1 of Chapter 235 subject to reversion of fund balances of June 30, 1958:

1. New Mexico Compilation Commission
2. New Mexico Digest Commission
3. State Engineer - Improvement of Rio Grande
4. State Engineer - Underground Water
5. Bureau of Publications - N.M. Magazine

CONCLUSIONS

1. Sale proceeds will not revert. To the extent fees are necessary to carry out the purposes of §§ 1-1-9 or 1-1-12, no reversion will occur.
2. Sale proceeds set aside by the Commission to defray the cost of supplements will not revert.
3. No reversion.
4. No reversion.
5. Reversion of both general fund revenues and other income.

OPINION

ANALYSIS

Bureau of Publications New Mexico Magazine

By Laws 1957, Chapter 235, § 1, page 544, this agency received a general fund appropriation, plus the appropriation of other revenues accruing to the magazine. Insofar as general fund appropriations are concerned, reversion thereof is controlled by § 11, page 574, Opinion of the Attorney General No. 58-121, dated June 11, 1958. These funds then will revert. Turning to the appropriation of "other revenues", such an appropriation does not in and of itself prevent reversion. Opinion of the Attorney General No. 58-113, dated June 2, 1958. The other revenues, as to reversion, would be governed by § 6 A. page 571, calling for reversion thereof:

". . . unless otherwise provided by law."

Turning to Chapter 10, Article 1, N.M.S.A., 1953 Compilation, dealing with the Bureau of Publications, some regard must be given § 10-1-5 providing:

"Said bureau, through the director, is empowered and authorized to receive **and disburse as is provided by law**, all moneys derived from advertising, subscription or sales of publications and payments to the bureau by other departments or from other sources, and such disbursements shall not be in excess of receipts." (Emphasis ours).

Firstly, there is some doubt the section even purports to authorize a revolving fund in any event. Rather, it may well contemplate only the receipt and disbursement of funds. Experience has familiarized us with the stock phraseology of revolving fund statutes, and such language is absent here. But at any rate, if one were to agree § 10-1-5 constitutes a revolving fund statute, then he is faced with the language:

". . . as is provided by law . . ."

That would again refer you into Laws 1957. Chapter 235, § 6 A. The two would then have to be reconciled, otherwise one would reason in circles, and 6 A, being latter in point of time **would control**. Finally, there is no provision of law directing the Bureau to employ the "other revenues" for any specific purpose or purposes. We hold reversion of other revenues will occur.

Compilation Commission New Mexico

Laws 1957, Chapter 235, § 1, page 530, appropriated funds to the Commission, but from sales and other revenues accruing to the Commission's fund. No general fund appropriation was made; hence, § 11 is not applicable. Reversion would occur, if at all, by virtue of § 6 A carrying the proviso above quoted.

Section 1-1-6 (c) provides:

"All money received by the compilation commission from the sale of any compilation or the supplements thereto shall be paid into the state treasury and credited to the New Mexico compilation fund."

This by itself initially conflicts with § 6 A. The latter calls for reversion to the general fund unless the law provides otherwise, and § 1-1-6 (c) does just that. While it does not, in terms, create a revolving fund, it nonetheless expressly requires all proceeds of sales of **any** compilation or supplements to go into that fund, negating placing the sale proceeds in any other fund, the general fund included. Sale proceeds will not revert.

That leaves the question of ". . . other revenues . . ." of the Commission unanswered. A search of §§ 1-1-1 et seq. reveals the only other revenues to be those originating from the \$ 1.25 fees imposed upon civil actions. These fees are required **by law** to go into the Commission's fund. Section 1-1-8. In addition, § 1-1-10 authorizes the Commission to issue certain debentures at such times as the Commission shall determine. Mr. Lowell Green, member and Secretary of the Commission, informs us such has been done and that further, a portion of said debentures are presently outstanding. This, in turn, brings us to § 1-1-12 providing:

"The issuance and sale of such debentures shall constitute and be an irrevocable and irrepealable contract between the state of New Mexico and the owner of any said debentures, that the taxes or fees pledged for the payment thereof at the rate now provided by this act shall not be reduced as long as any of said debentures remain outstanding, and unpaid, and that the state will cause said taxes and fees to be promptly collected, remitted and set aside and applied to pay said debentures, and the interest thereon according to the terms thereof. Any holder of any of the debentures issued pursuant to the provisions of this act, or any person or officer being a party in interest may, either at law or in equity, by suit, action or mandamus, enforce and compel the performance of the duties required by this act of any officer or person herein mentioned."

The question then becomes, are all fees within the terms of the contract and pledge (which is irrepealable)? To the extent the fees, or any portion thereof, are needed to carry out the provisions of § 1-1-12, the answer is clearly in the affirmative, and hence reversion would not occur. But for another reason we are satisfied that in no event and to no extent will any of the Compilation fund derived from the fees suffer reversion. Section 1-1-9 provides:

"There is hereby appropriated from the New Mexico compilation fund:

(a) The sum of \$ 117,500.00 for the purpose of paying for the compilation approved and ratified in section 1 (1-1-1).

(b) The sum of \$ 6,000.00 for the purpose of paying for clerical and legal assistance employed by the commission in checking and certifying the compilation approved and ratified in section 1 (1-1-1).

(c) **Sums certified by the commission as necessary** for the purpose of paying for any future compilation authorized by law, for paying for supplements to any compilation and

for paying clerical and legal assistance employed in checking and certifying compilations and supplements." (Emphasis ours).

We think the above clearly constitutes a continuing appropriation, employable by the Commission for the purposes therein set forth, including subsection (c); conditioned, however, upon maintenance of the contract and pledge, and giving the same priority. We do not believe the appropriation in Laws 1957, Chapter 235, to the Commission, nullifies the foregoing by negative inference. To hold that the 1957 appropriation has that effect, and is exclusive, would be to place the contract and pledge in serious jeopardy. This, we decline to do. To the extent fees are necessary to carry out either §§ 1-1-12 or 1-1-9, that portion of the Compilation Fund derived from fees will not revert; and the Commission should make proper certification to that effect.

In passing, our remarks about the irrepealability of § 1-1-12 should not be construed that this office holds that a Legislature, by any or all kinds of enactments, can bind future Legislatures.

New Mexico Digest Commission

The appropriation for this Commission, found in Laws 1957, Chapter 235, § 1 page 530, was not from the general fund, but from receipts from sales and other revenues accruing to the digest fund. We are thus concerned again only with § 6 A, as regards reversion. The statutes bearing upon the Digest Commission are §§ 1-3-1 to 1-3-12, both inclusive, N.M.S.A., 1953 Compilation. Of particular interest is § 1-3-8, providing:

"A tax or fee of \$ 1.25 upon each and every civil action filed in the office of the clerks of the various district courts of the state of New Mexico upon which a docket fee is now required to be paid, shall be charged and collected and required to be paid to the clerk at the time of the filing of such civil actions by the party so filing the same, and such fee or tax shall be in addition to the docketing fee and other fees and taxes now imposed by law for the filing of civil actions. Said fee or tax shall be charged and collectible by the district court clerks immediately upon the receipt of a certificate from the state treasurer to the effect that the principal and interest requirements to pay for the 1941 Compilation have been fully received, pursuant to section 11, chapter 191, Laws of 1941. The tax or fee herein levied upon said civil actions, when collected, shall be kept by said clerks in a separate fund and remitted to the state treasurer on the first day of every month to be credited to the New Mexico digest fund for the purpose of paying the interest and principal on the debentures herein authorized to be issued and sold. Any moneys received by said digest commission from the sale of said digest shall be paid into the state treasury and credited to the New Mexico digest fund, to be used for repaying the principal and interest on debentures herein provided for, in the same manner as funds received from the taxes or fees herein provided. Provided however, that a portion of the proceeds of such sales may, in the discretion of the digest commission, be set aside and employed in sufficient amounts to defray the cost of pocket parts required by the state. When the state treasurer has in the fund herein provided sufficient moneys to pay the outstanding principal and interest of every debenture so issued as and when the

same shall become due, and payable, and a sufficient amount to defray the expense of pocket parts required by the state for a period of five (5) years, the state treasurer shall certify such fact to each clerk of the district court within the state of New Mexico, and upon receipt of such certificate by such clerk, no further fee as herein levied shall be collected."

Mr. Lowell Green, member and Secretary of the Commission, informs us no debentures are outstanding; and further, that the \$ 1.25 fee is now nonexistent, insofar as the digest fund is concerned. Hence, either under § 1-3-8 or Laws 1957, Chapter 235, we are only concerned with sale proceeds. The fees were for retirement of debentures, and since none are outstanding, fees do not concern us. Sale proceeds were for retirement of debentures. Again, that need not concern us, except for one thing. The Commission may set aside a portion of sale proceeds, which go into the digest fund, to defray the cost of pocket supplements required by the state. **The amount thereof is in the Commission's discretion.** Whatever the amount selected, the Commission should so certify to appropriate officers of this State on or before June 30, 1958. To that extent, the digest fund will not revert. By way of conclusion, we know of no other revenue besides sale proceeds or fees ever accruing to the fund.

State Engineer - Underground Water Fund

This is found at Laws 1957, Chapter 235, § 1, page 543. Again, the appropriation is not from the general fund, but rather from fees collected by the State Engineer pursuant to § 75-11-9, to which we now direct our attention with § 6 A in mind. Section 75-11-9 provides:

"Upon the taking effect of this act, the state engineer shall, by regulations, establish the fees to be paid by applicants and declarants, which fees shall not exceed the reasonable cost of the service to be performed by the state engineer, and the applicant shall pay to the publisher the cost of the necessary advertising, and before ordering any hearing the state engineer shall require the applicant and protestant, or protestants, to each deposit with him a sum equal to the estimated cost of the hearing and, after the decision, the state engineer shall refund to the prevailing party or parties the sum so deposited by him or them and shall refund to the losing person or persons any unused portion of the moneys deposited by them. **All fees collected under the provisions of this act shall be deposited with the state treasurer and by him covered into the 'underground water fund' to be withdrawn by the state engineer, upon vouchers properly audited, for the purpose of administering this act.**" (Emphasis ours).

While there is no creation of a revolving fund in express terms, nonetheless a special fund is created into which the fees are to be deposited, to be employed for a specific purpose, i.e., ". . . administering this act. . .". Such is quite different than the situation of the Bureau of Publications, supra, or that confronting us in Opinion of the Attorney General No. 58-113, because the mere appropriation of non-general fund moneys does not alone prevent reversion. Rather, the instant situation is closer to that of the Compilation Commission, at least in part. The creation of the special fund, plus the

requirement the fees shall be deposited therein and shall be employed for a specific purpose, without any limitation in point of time, would be negated by reversion (or transfer) into the general fund. We believe this to be enough to bring into operation the ". . . unless otherwise provided by law." proviso of § 6 A. Appropriations to the State Engineer - Underground Water Fund will not revert.

State Engineer - Improvement of Rio Grande Income Fund

This appropriation was of all income, and **balances** (presumably meaning from other fiscal years) of said fund. See Laws 1957, Chapter 235, § 1, page 543. To us, the appropriation of "balances" is indicative of legislative intent that reversion was not to occur. More basic reasons obtain, however.

Section 7-1-16, N.M.S.A., 1953 Compilation, provides in part:

"The following funds are hereby created to the credit of which, in the respective proportions to which they are by law entitled, all moneys derived from state lands shall be deposited by the commissioner of public lands with the state treasurer, as nearly as possible on the first day of each calendar month, and the commissioner shall keep an accurate record of all such deposits: . . ."

A lengthy list of state land funds follows, among which is the instant fund.

At this juncture, the terms of § 7-1-17 become highly important. They are:

"The permanent funds created by this act (7-1-16 to 7-1-23) shall consist of the proceeds of sales of lands belonging thereto that may have been or may hereafter be granted to the state, not otherwise appropriated by the terms and conditions of the grant, and such other moneys as may be specifically provided by law, **and the income and current funds created by this act shall consist of rentals, sale of products from lands, interest on permanent funds, and anything else other than money directly derived from sale of all state lands so granted, the income derived from the investment of the permanent funds herein created, such other moneys as may be specifically provided by law, and miscellaneous income not provided for by this act.**" (Emphasis ours).

Which in turn brings us to the Enabling Act, § 10, in part providing:

"It is hereby declared that all lands hereby granted, including those which, having been heretofore granted to the said territory, are hereby expressly transferred and confirmed to the said state, shall be by the said state held in trust, to be disposed of in whole or in part only in manner as herein provided and for the several objects specified in the respective granting and confirmatory provisions, and that the natural products and money proceeds of any of said lands shall be subject to the same trust as the lands producing the same.

Disposition of any of said lands, or of any money or thing of value directly or indirectly derived therefrom, for any object other than that for which such particular lands, or the lands from which such money or thing of value shall have been derived, were granted or confirmed, or in any manner contrary to the provisions of this act, shall be deemed a breach of trust; Provided, however, That the state of New Mexico, through proper legislation, may provide for the payment, out of the income from the lands herein granted, which land may be included in a drainage district, of such assessments as have been duly and regularly established against any such lands in properly organized drainage districts under the general drainage laws of said state.

. . . .

A separate fund shall be established for each of the several objects for which the said grants are hereby made or confirmed, and whenever any moneys shall be in any manner derived from any of said land the same shall be deposited by the state treasurer in the fund corresponding to the grant under which the particular land producing such moneys were by this act conveyed or confirmed. No moneys shall ever be taken from one fund for deposit in any other, or for any object other than that for which the land producing the same was granted or confirmed. The state treasurer shall keep all such moneys invested in safe interest-bearing securities, which securities shall be approved by the governor and secretary of state of said proposed state, and shall at all times be under a good and sufficient bond or bonds conditioned for the faithful performance of his duties in regard thereto as defined by this act and the laws of the state not in conflict herewith. . . ."

By means of 30 United States Statutes at Large 484, 485, § 6, being the Act of June 21, 1898, Congress granted 100,000 acres to the Territory of New Mexico **for the improvement of the Rio Grande** and the increase of its surface flow. The express language of the Enabling Act, of course, confirms the grant, subjects the same, its income and proceeds to the trust, makes mandatory the establishment of a separate fund, and makes reference to the original grant to ascertain the purpose of expenditure from the fund.

We feel further comment on the above provisions of law, federal or state, would be superfluous. This and similar trusts are binding and enforceable; the Legislature is without power to divert the trust funds. State ex rel. Yeo v. Ulibarri, 34 N.M. 184, 279 P. 509. There is no reversion into the general fund.