

## Opinion No. 58-227

December 4, 1958

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

**TO:** Mr. H. B. Wood, Board Manager, Contractors' License Board, Santa Fe, New Mexico

### QUESTION

#### QUESTION

Which of the various income sources of the Contractors' License Board is subject to the 5% administrative fee provided by Laws 1957, Ch. 235?

#### CONCLUSION

The source of income is not determinative. Five percent of the total amount appropriated to the Contractors' License Board for each fiscal year must be paid into the state general fund.

### OPINION

#### ANALYSIS

In opinion of the Attorney General No. 57-88, rendered May 7, 1957, we held that laws 1957, Ch. 235, Sec. 5, made a special provision in this regard as to the boards therein named, among which we find the Contractors' License Board. We further held Laws 1957, Ch. 235, Sec. 6C, has no application to the boards named in Sec. 5. Consequently, we concern ourselves with the latter, the initial paragraph of which provides:

"For each of the forty-sixth and forty-seventh fiscal years, appropriations are made for each of the following boards from revenues provided therefor by law, subject to an annual budget for each board submitted to and approved by the Department of Finance and Administration. **Each board shall budget and pay into the State General Fund, five percent of the total amount appropriated to it for each fiscal year.** The Department of Finance and Administration shall not increase the total budgets of the boards in this section except in cases of emergency brought to the attention of the Department of Finance and Administration." (Emphasis supplied).

The quoted, and especially the emphasized language conveys a clear legislative intent that the particular source or sources of income is not of paramount importance. Rather,

the five percent is based on the **total** amount appropriated for each fiscal year. Nor do we observe anything in Sec. 67-16-5 (c) which provides.

"Resident contractors in this state whose gross annual contract amounts to less than twelve hundred (\$ 1,200.00) dollars shall pay a fee of one (\$ 1.00) dollar. An amount not to exceed five (5) per cent of said license fee may be expended by the registrar, with the approval of the Contractors' License Board, for publicity and educational purposes in connection with the administration of this Act. The fees received under this Act shall be paid to the State Treasurer and by him placed in a special fund to be known as the "Contractors' License Fund;" and no money shall be placed to the credit of nor paid out from said fund, except as provided in this chapter, provided that five (5) percent of each deposit made by the registrar for the credit of said fund shall inure to and be immediately transferred to the general fund and the remainder is hereby appropriated to carry out the purposes of this Act and shall be carried forward in the Contractors' License Fund for the succeeding fiscal years, and no part of said funds shall revert to the general appropriations account of the state at the end of any fiscal year."

which conflicts with our conclusion.