

Opinion No. 58-89

May 1, 1958

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

TO: Honorable Ben Chavez, Secretary, State Board of Finance, Santa Fe, New Mexico

QUESTION

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"We are submitting herewith a formal request for a written Opinion relative to payment of delinquent matching 'Retirement' contributions on the District Attorneys' salaries for the 43rd, 44th, and 45th fiscal years; matching contributions are also due for Social Security."

"Inasmuch as the 1957 Legislature appropriated \$ 15,380.00 for State's share of 'Retirement' contributions for the District Attorneys, when 5% of \$ 156,430 appropriated for salaries would be \$ 7,821.50, it appears that it might have been the intention of the Legislature to take care of the delinquent contributions due the Retirement Association out of current fiscal year's budget.

As concerns the amount due The Social Security Division, the Legislature approved \$ 5,796.00 for the 46th and 47th fiscal years for Social Security; the budget, however, exceeds required contributions for these two fiscal years by approximately \$ 2,200 per year. Therefore, could repayment not be made from amounts appropriated for the 46th and 47th fiscal years to the Social Security Division?"

CONCLUSION

The deficiencies for district attorneys' retirement and social security may be made from appropriations for these purposes for the 46th and 47th fiscal years, after allowance is made for retirement and social security of district attorneys for the 46th and 47th fiscal years, if the Department of Finance and Administration and the State Board of Finance approve the same.

OPINION

ANALYSIS

Your inquiry is answered by certain provisions in Laws 1957, Ch. 235, (The General Appropriations Act).

Section 1 thereof, standing alone recites that the appropriations made therein are for the 46th and 47th fiscal years. By itself, such might very well indicate a negative conclusion is called for.

But we think another section is determinative. It is Section 11 and provides:

"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).

We believe the exception, as conditioned, authorizes payment of the delinquent contributions, but as hereafter limited.

In Section 1, p. 532, District Attorneys received the following appropriations:

"1. To apply on salaries and expenses - Forty-Sixth Fiscal Year \$ 156,430; Forty-Seventh Fiscal Year \$ 156,430. 2. Retirement - Forty-Sixth Fiscal Year \$ 15,380; Forty-Seventh Fiscal Year \$ 15,380. 3. Social Security - Forty-Sixth Fiscal Year \$ 5,796; Forty-Seventh Fiscal Year \$ 5,796. Total - Forty-Sixth Fiscal Year \$ 177,606; Forty-Seventh Fiscal Year \$ 177,606"

Attached correspondence indicates the second and third line items are more than enough to cover the State's contributions for district attorney retirement and social security for the 46th and 47th fiscal years. Hence, delinquent contributions may be paid from said funds.

However, the delinquent contributions may be paid only to the extent of the excess in the funds for the current and next fiscal years. This for the reason the obvious and **primary** purpose of Laws 1957, Ch. 235, was to appropriate funds for the two fiscal years last mentioned. To the extent of the excess, the delinquent contributions may be paid.