

Opinion No. 59-187

November 13, 1959

BY: OPINION OF HILTON A. DICKSON, JR., Attorney General

TO: Earl Davidson Deputy Director Department of Finance & Administration Santa Fe, New Mexico

QUESTION

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Does the Department of Finance and Administration have the authority to set up and maintain a working capital fund to finance the operation of a central electronic data processing service?

CONCLUSION

Yes.

OPINION

{*289} **ANALYSIS**

Section 11-2-64, N.M.S.A. 1953 Compilation, P.S. provides as follows:

"The division of financial control of the state department of finance and administration shall maintain a central {*290} system of state accounts, and shall devise, formulate, approve, and control the accounting methods and procedures of all state agencies. The division shall prescribe forms for use by state agencies in connection with fiscal matters and may require reports from state agencies as may be necessary to carry out its duties and functions."

Chapter 253, Laws of 1957 § 4 also provides in part:

". . . The budget division will lend assistance to any state agency in the preparation of its budget estimates."

The method by which the functions and duties of the state Department of Finance and Administration are carried out is not spelled out in minute detail. It would be impossible for the legislature to provide for every routine operation of the department. Consequently, the authority to carry out the functions and duties of the department includes, by necessity, implied authority to do whatever is reasonable and necessary.

The Court, in the case of **In re Buck's License**, (Oregon), 232 P 2d 791, said:

". . . powers of administrative bodies are limited to those conferred by statute, either expressly or by necessary implication, . . ."

Theoretically there will be no excess in the working capital fund. The purpose of this fund is to enable the department to furnish electronic processing of data to other agencies of the state and at the same time to remain within its own budget limits. If a surplus should develop at the end of the fiscal year, the hourly charges to the state agencies using the service would have to be adjusted downward to prevent the accumulation of surplus. Of course, an emergency operating capital could be maintained in accordance with reasonable business standards.

We feel that the general grant of authority to the state Department of Finance and Administration is broad enough to cover the establishment of a working capital fund for the purpose set out in your request letter.

We do not think the legislature intended to deprive the various state agencies of the authority to establish, and operate under, accepted business practices.

A similar problem was presented in Opinion of the Attorney General No. 59-186. We expressly apply the limitation contained in the last paragraph of that opinion to the holding in this opinion. A copy of that opinion is included for your convenience.

By: B. J. Baggett

Assistant Attorney General