Opinion No. 59-206

December 15, 1959

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

TO: Waldo Anton, Jr., Director Business Management Department of Public Health P. O. Box 711 Santa Fe, New Mexico

QUESTION

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1. May the fees collected pursuant to Section 9 of Chapter 223, Laws of 1959, (codified as § 67-28-9, N.M.S.A., 1953 Compilation, P.S.), be used to defray the expenses incurred in administering the Act?

2. May the above fees be used as the State Board of Health determines in the State Department of Public Health's general operations?

CONCLUSIONS

1. No, see opinion.

2. No, see opinion.

OPINION

{*318} **ANALYSIS**

A careful check of Chapter 223, New Mexico Session Laws of 1959, indicates that no appropriation or authority to expend any fees collected was authorized by the Legislature. Therefore, there is no method for payment of expenses incurred by the Board.

Article IV, Section 30 of the New Mexico Constitution prohibits payment of money from the public treasury except upon appropriation made by the Legislature.

It is our opinion in view of the above that money collected from this Act cannot be used to defray the expenses incurred in administering the Act.

{*319} In answer to your second question, money collected from this Act cannot be used as the State Board of Health determines in the State Department of Public Health's general operations. Chapter 223, New Mexico Session Laws of 1959, fails to carry an appropriation or authority to spend any of the money collected as fees. Since Article IV, Section 30 of the New Mexico Constitution prohibits the payment of money from the

public treasury except upon appropriation made by the Legislature, there is no method for payment of expenses incurred by the Board.

It is, therefore, our opinion that money collected from this Act cannot be used as the State Board of Health determines in the State Department of Public Health's general operations.

By: Hilario Rubio

Assistant Attorney General