

Opinion No. 60-136

July 21, 1960

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

TO: Earl Davidson, Chief Budget Division Department of Finance and Administration
Santa Fe, New Mexico

QUESTION

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Do appropriations for the 48th Fiscal Year made under Chapter 288, Laws of 1959 remaining to the credit of the Department of Public Welfare revert to the General Fund as of June 30, 1960.

CONCLUSION

Yes, insofar as related to the \$ 9,100,000 Appropriation.

OPINION

{*514} ANALYSIS

{*515} The question raised by your inquiry involves statutory construction of Chapter 288, Laws of 1959 (the Appropriations Act). No constitutional questions such as those with which our Supreme Court was concerned in **Lucero v. Marron**, 17 N.M. 304, **State v. State Board of Finance**, 59 N.M. 121, and **State Board of Public Accountancy v. Grant**, 61 N.M. 287, are involved.

In answering your question, we feel it incumbent to bear in mind Section 21 of Chapter 288, supra, which expresses the general intent of the Legislature applicable throughout the Appropriations Act as follows:

". . . any unused balance of general fund appropriation 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, except as otherwise provided in this act."

With the above considerations in mind, we shall now discuss the specific area of the Appropriations Act which you have referred to, that is whether the unexpended balance of the \$ 9,100,000 appropriation to the Department of Public Welfare for the 48th Fiscal Year reverts to the General Fund.

First, we must invite attention to the opening paragraph of Section 2, under which this appropriation falls, and the provision therein that balances remaining to the credit of accounts set out under that section shall revert to the General Fund except as otherwise indicated.

In addition to the general appropriation of \$ 9,100,000 to the Department of Public Welfare, we also find the following language on page 839, Laws of 1959:

"There is also appropriated to the department of public welfare the following:

1. . . .

2. . . .

3. . . .

4. . . .

All the above funds shall be expended in accordance with annual budgets approved by the department of finance and administration. **None of the funds appropriated herein shall revert to the general fund at the close of the fiscal year.**" (Emphasis Supplied).

Because of the inclusion of the last underscored portion in this additional appropriation, there has been raised a question as to whether any part of the initial \$ 9,100,000 appropriated to the Department of Public Welfare should revert at the close of the fiscal year. It appears clear to this writer that this prohibition applies only to the four sums provided in the separate additional appropriation. One should bear in mind the nature of the appropriations therein provided. Specifically they relate to the amount made available from the Public School Equalization Fund, all federal grants made for welfare purposes, all receipts from sales, charges for services, rentals, etc., and, lastly, an emergency fund of \$ 750,000 made available from the state general fund and to be used for public assistance and administrative purposes only in the event of emergency and upon approval by the State Board of Finance. It will be recognized that these amounts are not such as would be made available from the General Fund or, if so, are specifically set aside for emergency purposes and are to be a continuing fund. Therefore, these would not fall within the category of the normal appropriations made available from general funds. This, we believe to be the intent of the Legislature in defining that these last named funds will not revert to the general fund. However, this same intent does not appear applicable to the general appropriation made available to the Department {516} of Public Welfare. It appears clear that its general appropriation falls within the purview of both the opening paragraph of Section 2 and of Section 21, Chapter 288, Laws of 1959. To this end, it should be noted that the paragraph containing the non-reversionary language is located in such a manner as would appear to sever it from the principal appropriation of the welfare department.

Therefore, we believe that no other conclusion can be reached but that that amount of the \$ 9,100,000 appropriated remaining unexpended at the close of the 48th Fiscal Year must revert to the General Fund.

By: Thomas O. Olson

Assistant Attorney General