

## Opinion No. 62-75

June 19, 1962

**BY:** OPINION OF EARL E. HARTLEY, Attorney General Oliver E Payne, Assistant Attorney General

**TO:** Mr. K. D. Spiller, Chief, Budget and Financial Control Division, Department of Finance and Administration, Santa Fe, New Mexico

### QUESTION

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Are balances in the State Tax Commission's Unit Assessment Fund at the close of the fiftieth fiscal year to be added to the appropriation for the fifty-first fiscal year or are such balances to be included within the total appropriation of \$ 66,800 for the fifty-first fiscal year?

#### CONCLUSION

Such balances are in addition to the \$ 66,800 appropriation for the fifty-first fiscal year.

### OPINION

#### ANALYSIS

Appropriations to the State Tax Commission for the current biennium are covered by Section 2, Chapter 254, Laws 1961. For the fifty-first fiscal year there is appropriated for purposes of unit assessment the sum of \$ 66,800. A proviso incorporated thereunder provided as follows:

"Provided that the above amounts for unit assessment shall be appropriated from proceeds of tax sales and delinquent tax collections. Any deficiency from these collections shall be paid from the state general fund but not in an amount exceeding forty-thousand dollars (\$ 40,000) for each year. **Balances remaining in the Unit Assessment Fund at the close of the fiftieth fiscal year shall not revert to the general fund.**" (Emphasis added)

Should there be a balance in the Unit Assessment Fund at the close of the fiftieth fiscal year, we are of the opinion that it is to be added to the \$ 66,800 appropriated for the fifty-first fiscal year. Such balance is an appropriated cash carry-over.

We reach this conclusion because if the balance is simply used to make up a portion of the \$ 66,800 appropriated for the fifty-first fiscal year, then no matter how it is denominated the practical effect has been to cause the balance to revert. The

Legislature specifically provided that any balance at the close of the fiftieth fiscal year was not to revert to the general fund. We would mention in passing that any balance in the Unit Assessment Fund at the close of the fifty-first fiscal year **does** revert to the general fund.

In view of our answer to the question set out above, the other question asked by you is deemed to be moot.