

Opinion No. 64-120

September 15, 1964

BY: OPINION OF EARL E. HARTLEY, Attorney General Thomas A Donnelly, Assistant Attorney General

TO: Mr. Floyd Cross, Superintendent, State Park and Recreation Commission, Santa Fe, New Mexico

QUESTION

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May the funds received in the Motor Boat Tax Fund created by Section 64-26-19.2, N.M.S.A., 1953 Compilation, be used in the normal course of operation by the State Park and Recreation Commission until such time as bonds have actually been issued under the Motorboat Fuel Revenue Bond Act?

CONCLUSION

See Analysis.

OPINION

ANALYSIS

The State Park and Recreation Commission, pursuant to a recent revision of its enabling legislation, (Laws 1963, Chapter 98), was charged with the duty of developing, maintaining, managing and supervising all state parks and recreation areas within the state of New Mexico.

The same state legislature which revised the park and recreation commission statutes also enacted into law another statute pertaining to the State Park and Recreation Commission. Chapter 76, Laws 1963, Compiled as Sections 64-26-19.1 and 64-26-19.2, N.M.S.A., 1953 Comp., creating the Motorboat Fuel Tax Fund as a special earmarked tax which was appropriated to the State Park and Recreation Commission for use in constructing, improving and furnishing boating and related facilities in this state.

The Motorboat Fuel Revenue Bond Act (Chapter 10, S.S. 1964) also empowers the State Park and Recreation Commission to issue revenue bonds in the aggregate amount of \$ 350,000.00 for use solely to **construct, improve and furnish boating and related facilities in this state**, with such bonds to be payable solely out of the motor boat fuel tax fund created by Section 64-26-19.2, N.M.S.A., 1953 Compilation.

Section 4 of the Motor Boat Fuel Revenue Bond Act creates the "Motor boat facilities fund" into which on each December 31 and June 30, the State Treasurer is directed to transfer all moneys in the motor boat fuel tax fund except the amount necessary to meet all principal and interest payments on bonds payable from the ensuing semiannual payment dates or on the next annual payment date. Such Section further provides:

"* * * The money in the motor boat facilities fund shall be used solely to construct, improve and furnish boating and related facilities in this state under the jurisdiction of the state park and recreation commission."

The Motor Boat Fuel Revenue Bond Act makes provision for the segregation of such amounts of money as are over and beyond the sums required to pay the necessary principal and interest installments on outstanding Motor Boat Fuel Revenue Bonds for the next two semiannual payment dates, and such moneys are placed in a special fund known as the "**Motor Boat Facilities Fund.**" The amounts in this fund may be expended by the State Park and Recreation Commission for the **construction, improvement and furnishings of boating and related facilities in New Mexico.**

Such limitation on the expenditure of the funds involved coincides with the restrictions set forth in Section 64-26-19.2, N.M.S.A., 1953 Comp., creating the Motor Boat Fuel Tax Fund.

As indicated by you previously, "operating expenses" within the import of your question are those not relating to the construction, improvement or furnishing of boating facilities.

The limitations placed on the expenditures of moneys derived from the Motor Boat Fuel Tax, the Motor Boat Facilities Fund and the Motor Boat Fuel Revenue Bond Act are identical. Under the restrictions enumerated above, it is our opinion that funds derived from the Special Motor Boat Fuel Tax may not be used for normal operating expenses of the State Park and Recreation Commission. Such funds are limited solely to "construct, improve and furnish boating and related facilities in this state under the jurisdiction of the State Park and Recreation Commission." This limitation prevents the use of such moneys for any purpose other than those primarily and reasonably related to the above enumerated uses.