Opinion No. 64-04

January 6, 1964

BY: OPINION OF EARL E. HARTLEY, Attorney General Wayne C. Wolf, Assistant Attorney General

TO: Mr. C. R. Sebastian, Deputy Director, Department of Finance and Administration State Capitol Building, Santa Fe, New Mexico

QUESTION

Statement of Facts

Pursuant to the Warrant Cancellation Act (Sections 11-2-43.1 to 11-2-43.3) the fiscal officer for the state cancelled $ 915.98 in outstanding warrants drawn against the Vocational Rehabilitation account. The total amount cancelled was then credited to the Vocational Rehabilitation Account from which it was transferred by a bookkeeping entry to the general fund. The transfer to the general fund was made in accordance with the provisions of the General Appropriations Act passed by the Legislature in its 25th regular session. Of the $ 915.98 which reverted, $ 677.35 originally came from the Federal Government. The Federal Auditor now takes the position that the $ 677.35 was never spent and that it is still money belonging to the Federal government.

QUESTIONS

1. Was it proper to treat the $ 677.35 described above as a revertible balance?

2. If the $ 677.35 should not have reverted, may it now be transferred to the Federal account for vocational rehabilitation?

CONCLUSION

1. No, but see analysis.

2. Yes.

OPINION

ANALYSIS

The Federal Auditor's present position is standard in all the states. He takes the position that an expenditure does not occur until a warrant is redeemed. Since the warrants with which we are concerned were never redeemed by the payees, he takes the position that an expenditure never occurred. The consequences of the position taken by the Federal Auditor are best understood by examining the procedure by which the Federal

Government financially participates with the state in the vocational rehabilitation program. The Federal Government will match the State Government in moneys spent for vocational rehabilitation. The Federal Government participates in the ratio of approximately 75/25. Since the Federal Auditor says that the state took $ 677.35 of Federal money, he will require that the same amount be paid back from state funds. This may be accomplished in two ways. A warrant may be drawn on the vocational rehabilitation account for that amount of money or in the alternative the auditor will refuse to consider that amount of money when he computes the matching allowable participation by the Federal Government. Either method would extinguish the state's obligation to the Federal Government, but each method will result in a loss to the state of approximately $ 2,000 in Federal funds. On the other hand if the $ 677.35 is returned to the Federal account for vocational rehabilitation, there will be no reduction in the amount of Federal Funds available for use by our state agency.

When the $ 677.35 was reverted to the general fund the department of Finance and Administration took the view that the services for which the warrants originally issued had been rendered. Therefore, the Federal Government received the services it had paid for and the money became state money when the warrants were cancelled under the Warrant Cancellation Act.

The Federal Auditor ultimately relies on 29 USC Section 32 (b) (1) as support for his position. That section reads as follows:

"From each state's allotment under this section for any fiscal year ending after June 30, 1962, the Secretary shall pay to such State an amount equal to the Federal share (determined as provided in Section 41 (i) of this title) of the cost of vocational rehabilitation services under the plan for such State approved under Section 35 of this title, including **expenditures** for the administration of the State plan." (Emphasis supplied).

The auditor argues, based on the above statute, that a cost is not incurred and that an expenditure does not occur until payment is finally made and accepted by the payee. Standard accounting practice would indicate that a liability occurs when an expense item is authorized and that the liability is ordinarily liquidated when a warrant is issued paying that item. Our problem is somewhat different, however, because the warrant is returned without being redeemed but the liability is ordinarily wiped off the books. We think this indicates that services are rendered free of cost. In addition, however, there appears to be authority for the contentions of both the state and the Federal Government as to when an expenditure occurs. See Webster's New International Dictionary 2nd Ed; Kohler, a Dictionary for Accountants (Prentice Hall, 1952); and **Crow v. Board of Supervisors of Stanislaus County,** 135 Cal., App. 451, 27 P.2d 655.

Therefore we are of the opinion that the word "expenditure" could apply either to the issuing of a warrant or the payment of that warrant when it is redeemed. On the other hand, however, we do not think that a cost has been incurred until the state has had to pay out money for services. In this particular instance we think that the state has

received services free of charge and no cost has been incurred. While there is no doubt that the warrants should have been cancelled under state law, we feel that the Federal statute prevents the Secretary of Labor from paying the state when in fact the services performed for the state have cost nothing. We therefore conclude that the $ 677.35 was never the property of the state and should not have reverted to the general fund.

Your second question is concerned with the possibility of transferring the $ 677.35 from the general fund to the Federal account for vocational rehabilitation. An understanding of the manner in which this sum reached the general fund is, we think, important to a proper analysis of the problem. Pursuant to the Warrant Cancellation Act the cancelled sums are required to be credited to the account on which they are drawn. Therefore, after cancellation of the warrants the money was considered to be in the vocational rehabilitation account. By virtue of the General Appropriations Act of 1961, however, balances in the vocational rehabilitation account were to go to the account for educational television for rebudgeting instead of reverting to the general fund. The balances in the educational television account were to revert to the general fund. Therefore a bookkeeping entry was made crediting this particular sum to the general fund. Our primary concern now is whether a transfer from the general fund to the vocational rehabilitation account would violate Article IV, Section 30 of the Constitution of New Mexico or Section 11-2-3.1, N.M.S.A., (Supp. 1963). Both the Constitutional provision and this particular statutory provision prevent the **expenditure** of money from the treasury or the general fund without legislative appropriation. We are not here concerned with the expenditure of money from the treasury which is prohibited by statute and by the Constitution. We are only concerned with the correction of a bookkeeping entry which will have the ultimate effect of crediting money to the vocational rehabilitation account instead of the general fund. For this reason we are of the opinion that the case of **McAdoo Petroleum Corp., v. Pankey,** 35 N.M. 246, 294 Pac. 322, is inapplicable because it dealt only with the power to refund and disburse money that had been erroneously paid to the State. Likewise Attorney General's Opinion No. 1668 given June 8, 1937, is inapplicable because it dealt with the power to transfer funds from one account to another when there was no error in bookkeeping made. We are of the opinion that the present problem merely involves the power to correct clerical errors and we note that Section 4-4-2.12, N.M.S.A., (Supp. 1963), gives the State Auditor this power. In conclusion it is our opinion that the crediting of the $ 677.35 to the general fund instead of to the vocational rehabilitation account was a clerical error which may be corrected. We stress, however, that this opinion applies only to the specific facts presented, and to effect given to those facts by 29 U.S.C., Section 32 (b) (1).