

## Opinion No. 67-108

September 20, 1967

**BY:** OPINION OF BOSTON E. WITT, Attorney General

**TO:** Mr. John E. Uxer Legislative Finance Committee State Capitol Santa Fe, New Mexico

### QUESTION

#### QUESTION

Can the State Highway Commission take money appropriated to the Commission by the legislature for one specific purpose and transfer it to another legislative line item for another purpose?

#### CONCLUSION

See Analysis.

### OPINION

#### {\*157} ANALYSIS

The General Appropriation Act for the present fiscal year (Laws 1967 S.S., Chapter 2) appropriated money to the State Highway Commission in the amount of \$ 34,200,525. Out of this total appropriation, the legislature specified seventeen categories for which the monies were to be expended, setting forth a total amount that could be used for each of the seventeen categories. These are legislative line items.

You ask if money appropriated for use in one category may be transferred to another category by the Highway Commission. As an example, you point out that the Highway Department might have anticipated Federal participation in a highway project, and might have expended some monies from appropriations category 6-secondary system-participating and later finds that the Federal Bureau of Public Roads will not participate {\*158} in the project, the project then becomes one of secondary system-nonparticipating which was included in appropriations category 7-secondary system-nonparticipating.

The answer to your question depends upon whether the total amount appropriated for one category is to be increased at the expense of the total for another category. If this is going to be the result, the Commission could not so transfer. Such a procedure would clearly be the transfer of a **legislative** line item specified to be spent for one purpose to a **legislative** line item specified for another purpose. In our opinion this cannot be done.

Article IV., Section 30, New Mexico Constitution provides in pertinent part as follows:

"Every law making an appropriation shall distinctly specify the sum appropriated **and the object to which it is to be applied.**" (Emphasis added)

This provision is designed to insure legislative control of the public purse. **Gamble v. Velarde**, 36 N.M. 262, 13 P.2d 559; Attorney General Opinion No. 5129 (1948).

Even though in a particular instance, due to a change in circumstances, such a transfer as described might be desirable, if such a procedure were followed without legislative authorization therefor, it would permit the use of monies for a purpose not authorized by the legislature when it made the appropriation. This would violate Article IV. Section 30 of the New Mexico Constitution.

However, if the **total** amount appropriated for any category is neither increased nor decreased, the legislative mandate is being followed.

By: Oliver E. Payne

Deputy Attorney General