

Opinion No. 67-71

May 31, 1967

BY: OPINION OF BOSTON E. WITT, Attorney General

TO: The Honorable George Fettinger State Representative Drawer M Alamogordo, New Mexico

QUESTION

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Under facts hereafter set forth can the State Board of Finance grant the sum of \$ 18,000 from the 55th or 56th fiscal year funds, to the Office of Civil and Defense Mobilization for its use in paying expenses of the Civil Defense Council during the remainder of the 55th fiscal year and during the 56th fiscal year?

FACTS

The State Civil and Defense Mobilization Act provides for the purpose of the office as follows:

"A. To create the office of civil and defense mobilization within the executive office of the governor, and to authorize the creation of local offices of civil and defense mobilization in the political subdivisions of the state;

B. To confer upon the governor and upon the governing bodies of the state emergency civil and defense mobilization powers;

C. To provide a plan of civil and defense mobilization for the protection of life and property in the state adequate to deal with disasters resulting from enemy attack, sabotage, or other hostile action, or from fire, flood, earthquake, or other causes;

D. To provide that all civil and defense mobilization functions of this state be coordinated with the comparable functions of the federal government, other states and localities, and of private agencies;

E. To initiate programs to render aid in the emergency restoration of facilities, utilities and other installations essential to the safety and general welfare of the public;

F. To receive, assist and care for persons under emergency disaster conditions, or persons who are displaced by war emergencies."

The Act, Section 9-3-18, N.M.S.A., 1953 Compilation, also provides for a Civil and Defense Advisory Council to be appointed by the Governor. The duties of the Council

are to **advise** the Governor and the Director on matters relating to Civil and Defense Mobilization. The members serve without pay but may be **reimbursed** for reasonable and necessary expenses incurred in connection with their duties **from funds made available to the Office of Civil and Defense Mobilization.**

The Office of Civil and Defense Mobilization has received no funds for this purpose in the past and its budget request for the 55th fiscal year and for the 56th fiscal year contained no request for funds for this purpose. The reason for the failure to request such funds was that no such council has heretofore been appointed.

The governor has now appointed such a council and the Office of Civil and Defense Mobilization has requested the sum of \$ 18,000 to be expended solely for the purposes of **reimbursing members** of the Council for expenses incurred. It is proposed that such funds, if obtained, be expended as follows:

"The following is a line item accounting of estimated expenditure:

PERSONNEL

Executive Secretary \$ 9,300

Stenographer 2 3,780

\$ 13,080

EMPLOYEE BENEFITS

Retirement 655

FICA 580

Insurance 55

1,290

TRAVEL

InState Mileage & Fares 7,440

In State Meals & Lodging 5,840

Out State Mileage & Fares 735

Out State Meals & Lodging 365

14,380

OTHER EXPENSES

Office Supplies 1,000

Printing and Photographic

Services 1,700

Rent 1,500

Subscriptions & Dues 200

Reporting & Recording 150

Communications 2,500
Freight & Express 200

7,250

\$ 36,000."

It is proposed that the expenses and services itemized will be incurred and performed and materials purchased during a small part of the 55th fiscal year and all of the 56th fiscal year. No part of the materials, expenses or services purchased, incurred or performed are directly to or for the Office of Civil and Defense Mobilization.

The appropriation set forth for the 55th fiscal year as well as that for the 56th fiscal year contains the following language:

"Funds appropriated in item (2) (emergency fund) may be allocated by the board for emergencies and necessary expenses affecting the public welfare. . . ." ____

If these funds are obtained from the Board of Finance, they will be matched by Federal funds in order to attain the amount of money deemed necessary to meet the listed expenses.

The Office of Civil and Defense Mobilization contends that the sole purpose of the Council is to completely **overhaul the policies and purposes** of the Office of Civil and Defense Mobilization, and to secure public acceptance of a **redesigned program**. The office further contends that an emergency situation does exist under the current world situation and that all Federal money under the program would be lost resulting in a lack of protection for projects on which money has previously been spent from matched funds. Certain programs funded 100% from Federal Funds would not appear to be endangered. (Community Shelter Program and radiological instrument maintenance contract).

It is proposed, if feasible, that the \$ 18,000 to be expended over the period above outlined be granted by the Board of Finance from money appropriated to it for the 55th fiscal year. If this is not feasible, it is proposed that the grant be apportioned from funds for the 55th and 56th fiscal years.

The Office of Civil and Defense Mobilization contends that the separate identity of the Council established by its contemplated functions as above set forth and by the fact that a separate annual program outline projecting activities a year in advance must be approved by the United States Office before matching funds are made available.

CONCLUSIONS

1. A grant can only be made from emergency funds for the year in which it is to be used under the above facts.
2. A grant cannot be made for use by the Council beyond reimbursement for expenses incurred by the **Council members** acting in their advisory capacity, and then only if it is determined that an emergency exists.
3. A grant can only be made to the office for the desired purposes if it is determined by the Board that an emergency exists justifying such a grant.

OPINION

{*104} ANALYSIS

The question contains two parts to be answered under the facts as above stated. The first part is whether funds appropriated for the 55th fiscal year can be obligated during that year in such a manner as to be expended during the 56th fiscal year. Unless so obligated, all unexpended money of the State {*105} Board of Finance of the 55th Fiscal year will revert to the general fund at the end of such year by virtue of specific language to that effect in the General Appropriations Act. Opinion No. 6193, Report of the Attorney General 1955-56.

Article IV, Section 30 of our Constitution provides as follows:

"Except interest or other payments on the public debt, money shall be paid out of the treasury only upon appropriations made by the legislature. No money shall be paid therefrom except upon warrant drawn by the proper officer. Every law making an appropriation shall distinctly specify the sum appropriated and the object to which it is to be applied."

There is no continued appropriation for the Board of Finance or the Office or Council under constitutional or statutory provisions. It would appear that the pledging of funds for one fiscal year to meet obligations of one or more subsequent fiscal years in order to prevent a reversion would violate this constitutional provision requiring legislative appropriations. Likewise, by specific provision the unexpended funds of the office of Civil and Defense Mobilization revert at the end of the Fiscal year so that a present transfer of funds to the Office would not accomplish the desired objective.

The provision for the reversion of funds at the end of the fiscal year is controlling. Opinion No. 65-114, Report of the Attorney General, 1965 and authorities cited therein. The Board of Finance may not obligate funds appropriated to it for the 55th fiscal year for the use of the Office of Civil and Defense Mobilization for the purposes expressed in its request beyond the close of the 55th fiscal year.

The General Appropriations Act for the 56th fiscal year takes effect upon its approval by the governor. Article IV, Section 23, New Mexico Constitution. This does not mean that

any funds appropriated for the 56th fiscal year can be spent prior to its commencement. However, the expenditure of such funds for such year may presently be budgeted by the Board since the act is presently in effect, as are the powers and authority granted thereunder.

Under the statutory purposes and duties of the Office of Civil and Defense Mobilization and of the Council, the **sole** function of the Council is to act **in an advisory capacity** to the governor and the director. Section 9-13-18, N.M.S.A., 1953 Compilation. The authority to institute programs and policies including those of public relations is vested in the Office of Civil and Defense Mobilization. **It appears that the contemplated expenditures of the requested funds is to enable the Council to perform functions** largely required to be performed by the Office of Civil and Defense Mobilization and, as stated above, this is attempting to be done in order to prevent the loss of Federal matching funds.

Any emergency situation justifying a grant of funds must, therefore, be one affecting the Office of Civil and Defense Mobilization and not one that arises as a result of the appointment of the Council, except insofar as reimbursement of expenses attendant upon their advisory duties might be concerned.

An "emergency" is defined in Webster's New International Dictionary (2nd Ed.) as follows:

"An **unforeseen** combination of circumstances which calls for immediate action; also, less properly, exigency." (Emphasis added).

Words and Phrases (Perm. Ed.) Vol. 14 p. 435, et seq., contains similar definitions requiring that the event must be one which could not normally be foreseen.

The State Board of Finance has the authority to determine whether the facts constitute an emergency within the definition thereof. We *{*106}* cannot say, as a matter of law, that facts furnished do constitute an emergency insofar as the Office of Civil and Defense Mobilization is concerned. **We do point out that the Board of Finance has no authority to increase an appropriation or to make one** to a state agency or office. It can only make a grant of funds when **an emergency** does arise requiring its action. Opinion No. 57-273, Report of the Attorney General, 1957-58.

Under the facts furnished, it is our conclusion that the Board of Finance can not make a grant of funds appropriated to it for the 55th fiscal year for use by the Office of Civil and Defense Mobilization during the 56th fiscal year, and any grant for use during that year must be made from funds appropriated for such year.

It is our further opinion that the General Appropriations Act for the 56th fiscal year is now in effect and, although the Board of Finance cannot spend any moneys contained in its appropriation for that year until the start of such year, or borrow money in

anticipation of such appropriation, it may administratively budget funds at this time to be expended during that year.

The appointment of the Council does not authorize the granting of any funds to **reimburse** expenditures made by its **members** acting outside of their advisory capacity. Funds can be granted only to the extent that the Board of Finance determines that an emergency is created as a result of the appointment of the Council. The Council, as such, is not authorized to expend any funds or to be reimbursed for expenditures. **The reimbursements is only to the individual member and would seem to be limited to personal expenses incurred and not to defray the cost of a program as proposed.**

Similarly, any grant of funds to the Office of Civil and Defense Mobilization can only be made if, under facts presented, the Board of Finance determines that an emergency does in fact exist. **It may not grant funds merely to supplement an appropriation or to supply the lack of one.** We also call your attention to the fact that funds for the operation of the office of Civil and Defense Mobilization were considered by the legislature and rejected by it and that under such facts the specific prohibition of the appropriation to the Board of Finance would seem to apply.

Under the normal definition it appears that it would be very difficult to say that an emergency was created by the mere appointment of the Council, under authorizing legislation several years old or to say that an emergency is created by a world situation no different than that existing during the term of the legislature or by a threatened loss of Federal matching funds which threat also existed during the legislative term.

By: James V. Noble

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