

Opinion No. 69-116

October 6, 1969

BY: OPINION OF JAMES A. MALONEY, Attorney General Mark B. Thompson, III,
Assistant Attorney General

TO: Miss Maralyn S. Budke, Director, Legislative Finance Committee, State Capitol,
Santa Fe, New Mexico 87501

QUESTIONS

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May the State Labor and Industrial Commission transfer some of its appropriation of \$ 22,400 for the general purpose of the agency to the Human Rights Commission, a separate state agency?

CONCLUSION

No.

OPINION

{*185} ANALYSIS

In opinion of the Attorney General No. 69-25, dated April 9, 1969, this office interpreted the Governor's line item veto power contained in New Mexico Constitution Article IV, Section 22. Aside from the discussion of the mechanics of a line-item veto, the opinion is important for its clarification of the theory that the Governor is exercising a legislative function in the use of a line-item veto. Because of the fact that the Governor is acting in that capacity, we may still speak of legislative intent in examining the law after he has exercised his line-item veto power.

In Opinion of the Attorney General No. 69-58, dated June 16, 1969, we determined that when the legislature appropriated a total amount of \$ 175,000 for the Labor and Industrial Commission and the Governor line-item vetoed one item for \$ 22,400, the Labor and Industrial Commission was still left with an appropriation of \$ 175,000.00. We further stated that the only reasonable legislative intent discernible was that the Commission then had \$ 22,400 of unearmarked funds which could be used for the general purposes of the agency.

Opinion 69-58 did clear up a possible misconception about a statement in Opinion No. 69-25. The latter opinion stated that if the Governor were to line-item veto the amounts earmarked for salaries, the agency would be "left without an appropriation for any salaries." The second opinion, No. 69-58, makes it clear that a general purpose

appropriation could be used for salaries and expenses as part of the general purpose of the agency. Of course, it must be kept in mind, that we are speaking of an appropriation where a total amount was appropriated but because of a line-item veto the earmarked funds do not add up to the total, leaving an amount unearmarked and which can be used for general purposes.

In examining the statutes concerning the State Labor and Industrial Commission, it is clear that the payment of funds to another state agency is not included in the general purpose of the Commission. Absent the existence of an agency with the powers of {*186} the Human Rights Commission, it might be argued that the Labor Commission could spend some of its money in combating discrimination in employment and thereby "foster, promote and develop the welfare of wage earners." But the statute specifically states that it will be the duty of the Labor Commissioner to enforce all labor laws in the State of New Mexico, the enforcement of which are not specifically and exclusively vested in any other officer, board or commission. Section 59-1-9, N.M.S.A., 1953 Compilation.

We conclude, therefore, that with the creation of the Human Rights Commission, the State Labor and Industrial Commission has no duty or power to enforce any laws concerning discrimination in employment and, therefore, none of its general purpose appropriation can be used for that purpose. Furthermore, it is absolutely clear that it is not one of the general purposes of the Labor and Industrial Commission to transfer money to another agency for the purpose of increasing the budget of the transferee.