

Opinion No. 80-17

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OPINION OF: Jeff Bingaman, Attorney General

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TO: Harold F. Olson, Director, Dept. of Game and Fish, Villagra Building, Santa Fe, New Mexico 87503

GAME AND FISH

The interest earned on the principal in the Game Protection Fund is to be credited to the state general fund, but the interest earned on the principal in the Shooting Range Fund is not.

QUESTIONS

Is the interest earned on the principal in the Game Protection Fund and Shooting Range Fund to be credited to the state general fund?

CONCLUSIONS

Game Protection Fund - Yes.

Shooting Range Fund - No.

ANALYSIS

The State Game Commission administers the "Game Protection Fund" pursuant to Section 17-1-14 NMSA 1978, which states in part:

"The State game commission shall have general control over the collection and disbursement of all money collected or received under the state laws for the protection and propagation of the game and fish, which money shall be paid over to the state treasurer to the credit of the game protection fund and shall not be transferred to another fund; and Chapter 17 NMSA 1978 shall be guaranty to the person who pays for hunting and fishing licenses and permits, that the money in said fund shall not be used for any purpose other than as provided in Chapter 17 NMSA 1978."

OPINION

The game protection fund is primarily comprised of money collected from the sale of state hunting and fishing licenses or permits and federal funds.

The Commission also administers the "Shooting Range Fund" under the provisions of the Shooting Range Fund Act, Sections 17-7-1, **et seq.** NMSA 1978. The Shooting Range Fund Act specifically provides:

"All money appropriated to this fund or accruing to it as a result of gift, deposit, investments or from other sources shall not be transferred to another fund or encumbered or disbursed in any manner except as provided in the Shooting Range Fund Act."

Each of these funds is established by statute, receives monies from specific sources, is created for a specific purpose and is to be distributed for specific purposes.

In **State ex rel. Board of County Commissioners of Bernalillo County v. Montoya**, 91 N.M. 421, 575 P.2d 605 (1978), the Court held that "[a]bsent a special statutory provision, the general rule is that interest is an accretion or increment to the principal fund earning it, and becomes a part of that fund." In applying the general rule in New {^{*144}} Mexico, the interest earned through the investment of the principal of the Game Protection Fund and Shooting Range Fund should be credited to those funds unless there is a statute directing otherwise. Cf. **State v. Straub**, 240 Or. 272, 400 P.2d 229, Opinion clarified 401 P.2d 29 (1965); **Boardy v. Smith**, 150 Neb. 272, 34 N.W.2d 331 (1948); **Pomona City School District v. Payne**, 9 Cal.App. 510, 50 P.2d 822 (1935).

In **State v. Straub, supra**, the Oregon Supreme Court considered a question similar to the one you have raised. The Oregon Attorney General had advised the Oregon State Treasurer to credit the interest earned on the principal of certain funds to those funds and not to the state general fund. A mandamus action was filed against the State Treasurer for the return of the interest to the state general fund. The court distinguished between two types of funds - constitutional funds and statutory funds. When funds are created by statute, the Court held that the long-standing administrative interpretation of transferring the interest to the state general fund had been acquiesced in by the legislature and that the legislature had recently, by statute, directed that certain interest be credited to the general fund. Consequently, the Court directed the State Treasurer to transfer the interest earned from the statutory funds to the state general fund.

These cases require us to determine whether under New Mexico law a special statutory provision exists which prohibits the application of the general rule. Article VIII, Section 4 of the New Mexico Constitution directs that all public moneys not invested in interest-bearing securities shall be deposited in authorized financial institutions and "the interest derived therefrom shall be applied in the manner prescribed by law."

Section 6-10-25 NMSA 1978 advises the state treasurer to invest surplus funds in interest-bearing investments. Section 6-10-26 NMSA 1978 requires that the state treasurer and the secretary of finance and administration report to the state board of finance the amount available for investment. The state board of finance is then required to direct the investment of available money. Section 6-10-26 then provides:

"The interest earned from the investment of this money shall be placed into the general fund of the state."

These statutes are special statutory provisions which exempt the game protection fund and others from the general rule as stated in **State ex rel. Board of County Commissioners of Bernalillo County v. Montoya, supra**. Accordingly, it is our opinion that the interest earned on the principal in the game protection fund must be credited to the state general fund.

In further support of this conclusion is a review of several New Mexico funds which the legislature has specifically authorized to have earned interest credited to the fund. For example, Investment or Permanent Funds, Section 6-10-27 NMSA 1978; Common School Permanent Funds or Income Funds, Section 6-10-32 NMSA 1978; Long-term Lease Guarantee Fund, Section 15-3-11 NMSA 1978; Medical Student Loan Fund, Section 21-22-8 NMSA 1978; Osteopathic Medical Student Loan Fund, Section 21-22A-8 NMSA 1978; Energy Research and Development Fund, Section 71-4-5 NMSA 1978; and, the Shooting Range Fund, Section 17-7-2, **supra**.

{*145} The Shooting Range Fund specifically provides in Section 17-7-2 that the interest earnings shall be credited to that fund. The provisions of Section 17-7-2 and other similar statutes reinstate the application of the general rule and supersede Section 6-10-26.

Therefore, any interest earned on the investment of money in the Shooting Range Fund must be credited to that fund, not the state general fund.

ATTORNEY GENERAL

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