

## **Opinion No. 82-01**

January 26, 1982

**OPINION OF:** Jeff Bingaman, Attorney General

**BY:** Michael Barlow, Assistant Attorney General

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

GAME AND FISH; PUBLIC FINANCES

Synopsis: Any interest earned on the investment of money in the Game Protection Fund must be credited to that fund, not the state general fund.

### **QUESTIONS**

Is the interest earned on the principal in the Game Protection Fund to be credited to the stage general fund?

### **CONCLUSIONS**

No. Opinion of the Attorney General No. 80-17, dated May 5, 1980 is hereby expressly overruled insofar as it is inconsistent with this conclusion.

### **ANALYSIS**

Opinion of the Attorney General No. 80-17, dated May 5, 1980, concluded that interest on the investment of the Game Protection Fund became a part of the general fund. That portion of the Opinion is overruled. The other conclusion that interest earned from the investment of the principal of the Shooting Range Fund is credited to that fund is correct and ratified hereby.

### **OPINION**

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. . . ."

The Game Protection Fund is clearly established by a specific statutory provision and is funded by specific sources. It is created for a specific purpose and is to be distributed for specific purposes.

As pointed out in Opinion 80-17, **State ex rel. Board of County Commissioners of Bernalillo County v. Montoya**, 91 N.M. 421, 575 P.2d 605 (1978), holds 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." 91 N.M. 423. The Court then concluded that since the interest from the investment of the proceeds of bonds for a county detention facility were a part of those proceeds, it could be used only for the purpose for which the bonds were approved, citing **Scott v. City of Truth or Consequences**, 57 N.M. 688, 262 P.2d 780 (1953).

Therefore, in the present instance, interest earned through the investment of the principal of the Game Protection Fund should be credited to that fund unless there is a "special statutory provision" to the contrary. In Opinion 80-17, it was concluded that Section 6-10-26 NMSA 1978 was such a special statutory {269} provision to the contrary. That statute states in part:

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

It should be noted, however, that Section 6-10-26 is a general statute that relates to **all** surplus state funds and should not, therefore be considered a "special statutory provision."

In **City of Raton v. Sproule**, 78 N.M. 138, 429 P.2d 336 (1967), the New Mexico Supreme Court stated that:

"A statute relating to persons or things as a class is a general law. A **special statute**, on the other hand, is one that relates to particular persons or things of a class, or is made for individual cases, or for less than a class of persons or things requiring laws appropriate to its peculiar condition or circumstances." (emphasis added) 78 N.M. 138.

Section 6-10-26 NMSA 1978 relates to **all** surplus state funds, which is a "class", and not to the Game Protection Fund specifically, which is less than a class and relates to a particular thing of a class.

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

## **ATTORNEY GENERAL**

Jeff Bingaman, Attorney General

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