

## **Opinion No. 87-32**

July 17, 1987

**OPINION OF:** HAL STRATTON, Attorney General

**BY:** Scott Spencer, Assistant Attorney General

**TO:** John A. Gallegos, State Budget Division, Department of Finance and Administration, 432 State Capitol Building, Santa Fe, NM 87501

### **QUESTIONS**

1. Does Section 15-3-26 NMSA 1978 preclude the budgeting of General Fund or other state funds in the Capital Outlay expenditure category, either through a budget increase or a budget transfer in an agency's budget, for the purchase of vehicles?
2. Does the statute necessarily mandate that state agencies purchase vehicles only with the originally approved operating budget amount in Capital Outlay for vehicle acquisitions?
3. Does the use of budget adjustment requests to place funds in Capital Outlay for the purpose of purchasing vehicles in any way infringe upon or usurp the legislature's authority to make agency appropriations?

### **CONCLUSIONS**

1. No.
2. No.
3. No.

### **ANALYSIS**

Section 15-3-26 NMSA 1978 provides in part: "No motor vehicle, except as hereinafter provided, shall be purchased or leased with state funds by any state officer or state department employee unless such purchase or lease is first specifically provided for in the approved budget." Laws of 1925, Chapter 98 Section 1 formerly provided that "no motor vehicle, except as hereinafter provided, shall be purchased with state funds by any state officer or state department employee unless such purchase is first approved by the State Board of Finance." In 1963 the legislature adopted laws of 1963, Chapter 37 Section 1, which effectively removed the State Board of Finance from the approval process and substituted the Department of Finance and Administration.

Section 6-3-18 NMSA 1978 requires the State Budget Division to send budget forms to each state agency on or before July 1 of each year. Pursuant to Section 6-3-19 NMSA 1978, agencies must complete the forms and return them to the State Budget Division by September 1 of each year. The budgets are then compiled and submitted as a state budget to the governor who, after review, submits it to the legislature pursuant to sections 6-3-20 and 6-3-21 NMSA 1978.

After the legislature meets and adopts an appropriations bill at the beginning of each year, each agency, pursuant to Section 6-3-7 NMSA 1978, must on or before May 1 submit a budget to the State Budget Division indicating how the agency intends to spend its appropriation for the ensuing fiscal year. The budget is subject to the State Budget Division's approval, and the state agency may not make any expenditures for the fiscal year covered by the budget until the State Budget Division has approved it. The legislature in its appropriations law has empowered the State Budget Division with the authority to approve budget transfers and budget increases. Laws of 1987 chapter 355 section 2G and H, provides in part:

G. Budget transfers and appropriation transfers may be made as follows:

(1) except as otherwise prohibited by law and subject to the standards and conditions enumerated below, the state budget division of the department of finance and administration may approve budget transfers of general fund money between the nine budget categories (i.e., personal services, employee benefits, travel, maintenance and repairs, supplies and materials, contractual services, other operating costs, capital outlay and out-of-state travel) contained within the approved budgets of agencies...

H. The state budget division of the department of finance and administration may approve increases in budgets of state agencies whose federal funds or other state funds exceed amounts specified in the general appropriation act of 1986. Such other state funds are hereby appropriated.

Pursuant to Section 6-3-18 NMSA 1978 the budget form that each state agency submits to the State Budget Division includes a "capital expenditures" category consisting of additions to plant or office; repairs and replacement; permanent equipment; and "other."

Section 15-3-26 does not provide that motor vehicle purchases may be approved only if specifically provided in the agency budget in its originally approved form. Because chapter 255 gives the State Budget Division the authority to increase agency budgets and to transfer funds between budget categories, it is our opinion that vehicle acquisitions may be provided either in the originally approved operating budget submitted by the state agency to the State Budget Division and then provided to the legislature, or in the approved budget as amended by approved budget transfers and increases that the State Budget Division approves. The budget and any amendment to it must provide that the funds are to be used specifically for the purchase or lease of motor vehicles.

The legislature may provide in the general appropriations bill for an executive agency to control the expenditure of the amounts appropriated without constituting a violation of the separation-of-powers provisions in article III, section 1 of the New Mexico Constitution. *State ex rel. Holmes v. State Board of Finance*, 69 N.M. 430, 367 P.2d 925 (1961). The legislature in House Bill 2 specifically has authorized the State Budget Division to oversee expenditures made pursuant to the General Appropriations Act. The legislature also has authorized the State Budget Division to approve increases in a state agency's budget and to approve transfers within budget categories.

It is therefore our opinion that the use of budget adjustment requests to place funds in the capital outlay budget category for the purpose of purchasing vehicles does not infringe upon or usurp the legislature's authority to make agency appropriations. The legislature requires only that the State Budget Division first must approve specifically the purchase of motor vehicles. This approval may occur either in the original operating budget or in approved budget increases or transfers.

**ATTORNEY GENERAL**

HAL STRATTON Attorney General