

Opinion No. 23-3742

November 27, 1923

BY: JOHN W. ARMSTRONG, Assistant Attorney General

TO: Requested by: Hon. Juan N. Vigil, State Auditor, Santa Fe, New Mexico.

Appropriations for 11th Fiscal Year do not Necessarily Lapse Even Though not Actually Expended Within That Year.

OPINION

{*106} You ask whether or not any unexpended balance of the appropriations made for the 11th Fiscal Year by Chap. 206, S. L. {*107} 1921, will be lost to the office or department for which appropriations were made unless such balance is actually paid out prior to December 1, 1923.

Our answer is no.

Sec. 1, Chap. 206, S. L. 1921 provides:

"For the 10th and 11th Fiscal Years of the State of New Mexico the following appropriations, or so much thereof as may be necessary, are made and directed to be paid for the purposes hereinafter expressed, for each year, except as otherwise required, to-wit: * * *"

Here follow the various items appropriated by the General Appropriation Act of 1921.

Sec. 8 of said Act provides:

"At the end of each Fiscal Year and after any appropriation and expenditures herein authorized shall have been paid, the remainder of such appropriations which have not been expended, shall be credited by the State Auditor to the same appropriations for the succeeding Fiscal Year, except as hereinafter provided * * *."

Certain exceptions are enumerated which are not necessary to recite in answering your inquiry.

It seems clear the Legislature intended the expenditure of any appropriation in its entirety should such expenditure become necessary. It nowhere undertakes to say when such expenditures as may be necessary are to be consummated. The fact that the Legislature has not prescribed a time within which such expenditures must be made will and does have doubtless a particularly salutary effect. Were offices and departments deprived of such appropriations unless expended within this particular Fiscal Year, it would evidently lead to extravagance or ill-advised use of the public

funds. The various officials, not knowing what their necessities might require in the way of supplies or expenditures for the coming year, would doubtless be tempted to purchase or contract to purchase large quantities of office equipment or other supplies believing that such might become "necessary" and that the appropriation for the 12th Fiscal Year might be inadequate to meet such necessary demands. Such purchases might be ill-advised and where supplies might be procured in large quantities, this alone might lead to extraordinary waste.

The law does not contemplate any such limitations, but expressly provides that the appropriation, or so much thereof as may be necessary, be paid. If the law were otherwise, many departments would be seriously embarrassed because of duties and obligations devolving upon them which could not be accomplished within the Fiscal Year and the very object of a part of the appropriation would fail. For instance, the appropriation for 1923 is meant and intended, doubtless, to cover the expenses incident to publication of reports for various departments for such year and such reports obviously could not be made up and published until after the close of such Fiscal Year. These are but a few instances recited for the purpose of arriving at the intention of the Legislature.

We can see no possible reason or law to justify the belief that such appropriation may not be expended after the close of the 11th Fiscal Year for any legitimate and necessary purpose. What the term "necessary" may mean is controlled largely by *{*108}* statute and certainly no fiscal agent of the state would have a right arbitrarily to say that any office or department had expended as much of any particular appropriation as is necessary. The abuse of the expenditure of public funds may be brought to the attention of the courts at any time and there the necessity for any expenditure may be determined.

There are some decisions which appear to hold that any unexpended balance reverts to the general treasury unless expended prior to the close of the particular Fiscal Year for which it was appropriated. We have made an examination of such cases, however, and believe that in each instance either the Constitution or the statutes of such states plainly make provisions to that effect. Following we quote rather extensively from cases in point which we believe fully justify the correctness of our conclusion:

"The Act of 1902, ch. 625, appropriated a sum of money for certain work to be done by the Maryland Agricultural College, and directed that "the first payment shall be made during the fiscal year ending September 1st, 1902." The Act of 1904, ch. 557, appropriated other sums for work to be done by the said college in connection with Farmers Institutes, and directed that "the said sum shall be payable on and after 1st October of each fiscal year ending September 30th, 1904." Upon petition for a mandamus directing the Comptroller to pay the appropriations, held, that if these sums, or part of them, were not paid during the fiscal year for which the appropriations were made, they may lawfully be demanded and paid thereafter, since it was the intent of the Legislature that the college should receive each year the sums mentioned for the purposes specified, and the direction as to the time of payment is not to be construed as

a denial of the power of the Comptroller to pay after the close of the fiscal year, and there is no general law which declares that money not drawn in the fiscal year for which it has been appropriated cannot be drawn thereafter." -- *The Maryland Agricultural College v. Gordon T. Atkinson, Comptroller*, 102 Md. 557.

"Where Acts 1904, c. 225, creating a state aided road fund, directed annual appropriation, 'or so much thereof as may be necessary' to carry out statutory provisions and Acts 1910, C. 217, transferred powers and duties of geological and economic survey to the state roads commission and transferred the 'unexpended balance,' and provided for the expenditure of the increased appropriation, "or so much thereof as may be necessary," the Legislature clearly intended expenditure of entire appropriation if necessary, and this right will not be defeated by commission's failure to file statement showing obligations at close of the fiscal year, no law requiring such statement, and expenditure being shown necessary; and the amount remaining at the end of the year should not have been reverted to the general treasury, and will be restored to the commission's credit." -- *McMullen, State Comptroller, v. Zouck et al.*, 100 Atlantic, 728.

"\$ 42,000 were appropriated for the year 1893, to be used in the construction of said Eastern prison, and \$ 30,000 appropriated for the same purpose for the year 1894. {**109*} It seems that only \$ 9 of said fund was actually used and paid out in the fiscal year 1893. The auditor contends that he is not required to draw his warrant for the claim of relator, for the reason that the unused balance of said appropriation of \$ 42,000 was, on the 1st day of December, 1893, that being the day on which the fiscal year of 1893 ended, by law transferred to the general fund of the state, and that as the whole amount of said appropriation for the year 1893 was not used and paid out during said year, and was for that reason so transferred to the general fund, the \$ 30,000 appropriated for the year 1894 was also transferred to the general fund on the 1st day of December, 1893, and that there is therefore no appropriated fund on which he can draw his warrant to pay relator's claim. We do not think this position tenable. The appropriation involved is for a specific purpose, and is for two years. We think the appropriation in question, being for two years, is subject to any demands and liabilities that may be incurred by the state's agents during the whole period that it was intended by the legislature that it should continue. Any other construction would prevent the state's paying its legal obligation, and embarrass it in carrying out the public enterprises contemplated by the legislature in enacting such appropriation laws. This view has been held in other jurisdictions under similar constitutions and laws to ours. We think the contention of respondent that said appropriation, or any part thereof, lapsed on the 1st day of December, 1893, the end of the fiscal year for 1893, and was lawfully transferred to the general fund on that day, is not supported by authority or any legitimate construction of the laws of this state." -- *State ex rel. Bailey v. Cook, State Auditor*, 36 Pac. 178.