

## Opinion No. [29-63]

May 3, 1929

**TO:** Office of the Attorney General of New Mexico

PUBLIC MONIES -- To be paid to treasurer and disbursed only after being appropriated. Departments limited to monies appropriated.

### OPINION

I am just in receipt of your letter of even date calling my attention to the custom which is apparently followed by a number of departments of the state government, of paying for the printing of the laws governing their respective departments from the contingent funds of their offices and, after selling copies of such printed laws, to reimburse their contingent funds with the fees collected by such sales. You ask me whether or not any such department can spend the fees so collected in addition to the amount appropriated by law for the contingent fund of such department, and also whether or not the treasurer should accept any such money so collected and deposit same in the contingent fund of any such office or department.

In reply thereto I beg to call your attention to section 2 of chapter 76 of the Laws of 1923, known as the Public Moneys Act, wherein it is provided that it shall be the duty of any officer or person in charge of any state agency receiving any moneys in cash or by check, draft or otherwise, for or on behalf of the state or any agency thereof from any source, with certain exceptions which do not apply here, to forthwith deliver or remit the same to the state treasurer. Hence, it is not only legal but is absolutely incumbent upon any department of the state government receiving moneys as aforesaid, to forthwith deposit same with the state treasurer.

By section 30, article 4 of the Constitution of New Mexico it is provided that, except interest or other payments on the public debt, money shall be paid out of the state treasury only upon appropriation made by the legislature, and by the provisions of section 7 of chapter 187 of the Laws of 1927, the General Appropriation Act under which we are now operating, it is provided that:

"\* \* \* no department shall spend in any year more than the amount appropriated for that year. \* \* \*"

and by section 1 of the said act, certain specified sums of money are appropriated for the contingent, office and traveling expenses of the various departments.

Bearing the foregoing in mind it will be seen at a glance that if any department, through the same of printed copies of their laws, etc., the expenses for which are undoubtedly a proper charge against their respective contingent funds, realize from said sales a sum of money which, when deposited to the credit of their contingent funds, thereby raises

the amount of such contingent fund to a sum greater than the amount appropriated therefor by the legislature, then, in that event, they cannot draw on or spend the said excess amount without violating the provisions of said section 7 of chapter 187, Laws of 1927, above quoted and the provisions of section 30 article 4 of the Constitution.

Trusting that the foregoing gives you the information you desire, I am.