

## Opinion No. [29-64]

May 4, 1929

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

PUBLIC MONIES -- Debts contracted in one fiscal year not to be paid from appropriations for a different year.

### OPINION

I am just in receipt of your favor of the 3rd inst. in which you ask my opinion as to whether or not bills contracted for by any department during one fiscal year can be paid from funds of another fiscal year, and whether or not you would be justified in approving any vouchers for (a) services rendered, (b) supplies purchased, (c) traveling expenses, incurred during the 17th fiscal year out of funds of the 18th fiscal year.

In reply thereto will state that the intent of the legislature in making an appropriation of a certain sum of money for the contingent expenses of some department, was undoubtedly with the idea that the particular sum appropriated was to run that department for that particular fiscal year. Section 1 of chapter 187 of the Laws of 1927, the general appropriation bill under which we are now working, and also section 1 of the new general appropriation bill, passed by the recent special session of the Ninth Legislature, specifically states:

"For the sixteenth and seventeenth 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 declared, \* \* \*"

and section 7 of said chapter 187 of the Laws of 1927 goes on to provide as follows:

"At the end of each fiscal year the balance of such appropriations for state departments 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, but no department shall spend in any year more than the amount appropriated for that year. At the end of each fiscal year, the balance remaining in unappropriated funds shall be distributed pro rata, among the funds for which appropriations are herein made and such distribution shall be applicable to such appropriations for the succeeding fiscal year."

In view of the foregoing, I do not believe that, generally speaking, the funds of one fiscal year can be used to pay for bills contracted for during the preceding fiscal year without doing violence to the intention of the legislature, as expressed in the law above quoted, otherwise we would be in a position of having a department spending, or contracting for the expenditure of, more money during said fiscal year than was appropriated therefor.

Turning to the specific instances cited by you, will say that I do **not** believe that the funds of a department for the 18th fiscal year can be used to pay for services rendered or traveling expenses incurred during the 17th fiscal year. As to the item of supplies purchased, a somewhat different question arises for the reason that the supplies are probably for the use of the department not only for the particular fiscal year in which they were purchased, but also for succeeding fiscal years, in other words, it is a sort of a continuing proposition. For example, we will say that a department purchases a set of books on the installment plan. Those books are for the continuous use of the said department and I believe that it would not be a violation of the law to make a part payment on the same during one fiscal year and complete the payment thereon during the succeeding fiscal year. The same reasoning applies to the purchase of supplies in general, which by their nature are such that they can be used right along. This does not hold true, of course, in all cases, because there are certain supplies which by their very nature are not for the continuous use of the department. For instance, take the purchase of oil or gasoline for a department's motor car, unless the same was purchased on the very last day of the fiscal year, it is not for the continuous use of the said department for the succeeding fiscal year, and since the custom has been to hold the books open for about ten days before the set up for the succeeding fiscal year is made, this particular question would hardly arise.

It is, therefore, a question of the exercise of sound common sense when it comes to the payment out of funds of one fiscal year for "supplies" purchased during the preceding fiscal year.

As I stated above, however, "services rendered" and "traveling expenses" can hardly be construed as being of such a nature that the funds of one fiscal year can be used to pay for the same when they have arisen during another fiscal year.