

Opinion No. 32-514

September 8, 1932

BY: E. K. Neumann, Attorney General

TO: Mr. Juan N. Vgil, State Comptroller, Santa Fe, New Mexico.

{*178} Your letter of September the 7th raises the question as to whether a surplus may be transferred from the county salary fund and you direct our attention to Sections 33-3215, 33-3222, and 134-513, all of the 1929 Compilation.

Sections 33-3215 provides in effect that when the county salary fund is at any time not sufficient to pay salaries and expenses such deficiencies shall be paid from the current expense fund, such fund to be reimbursed from funds as they are available. It is also provided that any surplus remaining in the county salary fund at the end of any calendar year may be transferred to the credit of the county road fund or the county expense fund, upon order of the county commissioners.

The provisions with reference to the transfer of the surplus has been repealed by Section 32-2222, which is a 1919 law, whereas the former provision relative to transfer of surplus was a 1915 law. This latter act provides that such surplus is to {*179} be transferred to and become a part of the county salary fund for the year following the arising of such surplus.

Section 134-513, which is a part of the State Comptroller's Act, provides in part that where not prohibited by existing law the state comptroller may, under written request of the state tax commission with the approval of the attorney general, authorize transfers of funds from one budget item to another.

In our opinion, however, the former sections quoted are sufficient to limit the comptroller in the instance under consideration under the phrase "where not prohibited by existing law."

These former sections, in our opinion, do place a limitation upon the comptroller in making transfers of this nature and we do not believe that such transfer may be made to any fund other than to the county salary fund for the following year.

By Frank H. Patton,

Asst. Attorney General