

## Opinion No. 32-515

September 8, 1932

**BY:** E. K. Neumann Attorney General., By Frank H. Patton,

**TO:** Mr. Thos. E. Boyd, Boyd Auditing Company, Lovington, New Mexico.

{\*179} We have your letter of September the 5th, in which you desire information relative to the Bateman Act and wherein you cite a specific instance as follows:

The county has a budget allowance of \$ 75,000.00 for all funds of a fiscal year. It spends \$ 78,000.00, thereby exceeding the budget to the extent of \$ 3,000,.00. However, the county has revenues belonging to that year of \$ 90,000.000 collected and you wish to know whether or not the Bateman Act permits expenditures up to the revenue collected.

The Bateman Act is a law of 1897 and is cited as Section 33-4241 of the 1929 Compilation. This Act makes reference to indebtedness and expenditures during the current year, prohibiting such indebtedness during any current year which at the end of such current year cannot be paid out of moneys actually collected and belonging to that current year.

The current year, as applied to the Bateman Act, begins on the first day of January and ends on the last day of December, as provided by Section 33-4246.

The budget law is set forth in Section 33-5901 of the 1929 Compilation and is a 1925 law.

It is provided in Section 33-5906 of the 1929 Compilation as follows:

"At the close of any calendar year should the actual revenues exceed the estimated budget estimates of expenses as so finally approved and certified, such excess moneys shall be applied on the budget estimate for the next succeeding year."

Section 33-5905 of the 1929 Compilation provides, in part as follows:

"The state traveling auditor is empowered, should the payments for any specific item in such approved and certified budget estimate not be equal to the amount as so allowed for such item in said estimate, to permit in writing the unused remainder as so allowed to be used toward the payment of any other item in such estimate in such approved budget, when the necessity therefor exists, but no such approval by the state traveling auditor shall have the effect of allowing total payments to be made in excess of the total budget estimates for each county in the state as so finally approved and certified."

Of course, under subsequent provisions of our laws, the duties of the state traveling auditor have been transferred to the state comptroller and the duty and power as specified in the foregoing quotation is now vested in that official.

Apparently, the entire budget law is intended to limit expenditures to the budget estimates as finally approved by the State Tax Commission and we believe that the budget law { \*180 } has reference to the fiscal year which begins on July 1st and ends on June 30th, of each year.

We believe, therefore, that you should determine whether or not the county has exceeded its budget in any fiscal year and if you find that this is true, then the county officials should be charged with such amounts.

Asst. Attorney General