

Opinion No. 38-1993

July 11, 1938

BY: FRANK H. PATTON, Attorney General

TO: Hon. James J. Connelly State Treasurer Santa Fe, New Mexico

{*247} I have your letter of January 9th wherein you make inquiry as to the {*248} disposition of the unused balance at the end of the fiscal year in the "Severance Tax Administration Fund." This fund is created by Section 4, Chapter 103 of the Session Laws of 1937. The said section is a part of what is commonly termed the Severance Tax Law, which levies an excise tax upon certain products severed from the soil of the State of New Mexico.

Your attention is directed to the fact that under said Section 4 all of said taxes are collected by the Bureau of Revenue and paid over to the State Treasurer, whose duty it is to cover all such taxes into the general fund of the State Treasury after deducting 3% for administrative purposes, which is placed by the State Treasurer in the fund above named.

The section then makes an appropriation of the said 3% "or so much thereof as may be necessary" for the enforcement of the act, the same to be expended only with the approval of the State Board of Finance.

In the General Appropriations Act, which is Chapter 232 of the Session Laws of 1937, we find in Section 3, sub-paragraph 6, that the legislature has again taken recognition of this said 3% and makes an appropriation for administrative purposes for the 26th and 27th fiscal years. It is provided herein that expenditures shall be in accordance with detailed budgets prepared and submitted annually to and approved by the State Board of Finance and the Governor.

There is no conflict between the two appropriations; the former being special and continuing, and the latter being general for the two fiscal years and with the additional provision that expenditures be in accordance with detailed budgets.

Your attention is directed to the fact that in both appropriations the words "or so much thereof as may be necessary" are used in both places.

My interpretation is that it was the intention of the legislature to provide for an administrative fund from the severance taxes collected up to a maximum amount of 3% and that unused balances in such funds should revert to the fund in which the severance taxes were covered.

In this case, under said Section 4 of Chapter 103, all of these taxes are covered into the general funds of the state and, therefore, the unused balances at the end of the fiscal year should revert to such general funds.