

## Opinion No. 41-3919

October 14, 1941

**BY:** EDWARD P. CHASE, Attorney General

**TO:** Miss Billy Tober Supervisor of Finance Department of Public Health Santa Fe, New Mexico

{\*106} In your letter dated October 11, 1941, you ask the following questions:

"1. Are the County Commissioners or the State direct or of Public Health administratively responsible for the District Health Officers fund? (See Chapter 131, Section 6, Session Laws of 1935).

2. May County Commissioners withhold any part of the District Health Officers Fund for any reason regardless of the amount used after being deposited with the State Treasurer?"

In answer to your first question, Section 6, Chapter 131, Laws of 1935 provides in part as follows:

{\*107} "All expenditures from said funds shall be disbursed upon vouchers of the State Board of Public Welfare."

In view of this language, it is my opinion that the State Director of Public Health has the exclusive right to administer said funds, and that the duty of the county commissioners ceases when they have budgeted the required amount and have paid over to the State Treasurer funds collected for that purpose.

In answer to your second question, Chapter 132 of the Laws of 1935 provides as follows:

"Boards of County Commissioners, annually, at the time of levying other state and county taxes, shall levy a special health tax upon all taxable property in their respective counties, not to exceed one mill on the dollar of assessed valuation of such property, and the proceeds thereof shall be covered into the 'county health fund', which fund is hereby created, and shall be used only to defray the cost of enforcing all of the health laws, rules and regulations as provided by law. All payments from the county health fund shall be made only as provided by law."

Since both Chapter 131 and 132 were passed at the same session of the legislature, they must be construed together if possible. This office has heretofore held that the one mill levy provided for in Chapter 132 is the maximum that may be levied for the County Health Fund. Out of that the amount to be remitted to the State Treasurer and covered into the district health officer's fund must be budgeted and paid.

Since Chapter 132 states that said fund "shall be used only to defray the cost of enforcing all of the health laws, rules and regulations as provided by law", it is my opinion that said fund is not transferable, and for that reason it is the duty of the county commissioners to pay over to the State Treasurer such amounts as may be budgeted for the district health officer's fund, and no part of such funds which are collected may be withheld by the Board of County Commissioners.

By C. C. McCULLOH,

Asst. Atty. General