

## Opinion No. 42-3992

January 17, 1942

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

**TO:** Mr. C. R. Sebastian State Comptroller Santa Fe, New Mexico

{\*145} In your letter dated January 15, 1942, you inquire whether cash and budget transfers may legally be made from District Court Funds to the Sheriff's Defense Fund in connection with the State's Emergency Defense Program.

In construing Section 34-306 of the 1929 Code, this office has consistently ruled that the district court has a wide and almost unlimited discretion in the expenditure of the court fund in payment of the expenses of the district court in each county, the principal limitation being that there must be money in the county treasury to meet and pay any allowance made by the court. Under the proposed method, as I understand it, no money is to be spent out of the court fund as such, but it is contemplated that a transfer of such money be made from the court fund, and thereafter expended out of the fund to which the same is transferred. Under {\*146} such a procedure, it is not necessary to determine whether the proposed expenditure comes within the discretion of the district court in making expenditures from the court fund.

Under Section 134-513 of the 1929 Code, we find this language:

"Where not prohibited by existing law, the State Comptroller may, upon the written request of the State Tax Commission, bearing the written approval of the Attorney General, authorize the transfer of funds from one budget to another, when such transfer is requested by the county, city, town, village, school district, drainage or irrigation district, board having control of the expenditure of fund provided by such budget."

The above section is authority for the transfer of cash from one fund to another, and authority for the budget revision is found in Chapter 233, Laws of 1937, Section 1, in which we find this language:

"Whenever there shall arise in any County, Municipality or School District of this State, an unforeseen emergency necessitating the expenditure of funds for a purpose not provided for in the budget of such County, Municipality or School District with which to meet such expenditure, the State Comptroller shall have power in his discretion, with the written approval of the Chief Tax Commissioner and of the Attorney General, to revise the budget of such County, Municipality or School District in such manner as to authorize such expenditure, provided that such revision will not result in increasing the total of the budgets of all county, municipal, or school district funds, exclusive of interest and sinking funds."

From the foregoing statutes, if the county commissioners and the district judge having supervision of funds in the various counties request the Tax Commission for authority to transfer cash funds from the Court Fund to the Sheriff's Defense Fund, then the Comptroller may make such transfer upon the written request of the Tax Commission, with the approval of the Attorney General, and likewise, the Comptroller may then, with the written approval of the Chief Tax Commissioner and the Attorney General, revise the budgets to conform with the amount of cash available for transfer provided such revision does not result in increasing the total of the budget for all county items. If the budget revision and cash transfers are made in the manner as above outlined, the same will be legal in all respects.

By C. C. McCULLOH,

Asst. Atty. General