

Opinion No. 43-4311

June 4, 1943

BY: EDWARD P. CHASE, Attorney General

TO: Mr. G. Herkenhoff, State Director, Department of Public Welfare, Santa Fe, New Mexico

We have your letter of May 27, 1943, wherein you request an opinion concerning Section 14. Chapter 95 of the Session Laws of 1943 which provides:

"(a) All revenues including taxes, penalties, interest and license fees collected under this act shall be paid over to the State Treasurer, and shall be placed by him in a fund to be known as the 'Department of Public Welfare Fund' for old age assistance.

"(b) At the end of each month all sums remaining in said Department of Public Welfare Fund for old age assistance shall by the State Treasurer be permitted to be drawn upon for the purposes of old age assistance exclusively to be indicated by law in the appropriation act covering said Department."

You state that the legal department of the Social Security Board has raised the question as to whether or not these monies will become available to your department even though there is no reference to revenues to be derived from the Tobacco Tax in the General Appropriation Act passed by the recent session of the Legislature.

Our Constitution or Statutes do not require that all appropriations be in the General Appropriations Act, and, as a matter of course, many appropriations are always found outside of the General Appropriations Bill. Therefore, the mere fact that such revenues are not referred to in the General Appropriations Act has no significance whatsoever in determining whether or not these funds shall be available to your department.

Section 14 of the above Act is, in itself, an appropriations act, and does not violate Article 4, Section 30 of the New Mexico Constitution, which provides that every law making an appropriation shall distinctly specify the sum appropriated and the object to which it is to be applied.

Gamble v. Velarde, 13 P. 2d 559, 36 N.M. 262, in passing upon a general statute which was provided for the payment of certain amounts which were not definitely set out, stated in sustaining such legislation:

"As to the meaning of 'appropriation' and as to the legislative intent to make an appropriation, judicial expressions more or less conflicting have been brought to our attention. We consider that the intent to make an appropriation is plain on the face of the statute. Precedents in this jurisdiction favor this view. State ex rel. Fornoff v.

Sargent, 18 N. M 272, 136 P. 602; Dorman v. Sargent, 20 N.M. 413, 150 P. 1021; State ex rel. Delgado v. Sargent, 18 N.M. 131, 134 P. 218."

The Court in further passing on the question which might be raised by the Social Security Board, in view of the language of Article 4, Section 30, stated:

"If 'sum' means an amount to be expressed in dollars and cents, defendant's position is impregnable. Such is really defendant's contention. To the contrary, it is presented that the language does not require it; that such an interpretation would be strict, unreasonable, and arbitrary; that it would merely hamper legislation without promoting the constitutional purpose; and that such purpose is as well accomplished by limiting the aggregate of the payments to a special fund, all of which is dedicated to the specified object, or so much of it as may be necessary."

"* * * A distinct specification of object itself limits the fund and serves to prevent executive encroachments. When, as here, there is also a dedicated fund which cannot be exceeded, the constitutional principle is not invaded."

In view of the above, it is my opinion that Section 14 can have only the effect that it purports to have, and that all funds derived from the Tobacco Tax will be available exclusively to your department for the purposes therein designated.

Hoping that the above fully answers your question and any questions of the Social Security Board, I remain

By HARRY L. BIGEE

Asst. Atty. General