

## Opinion No. 47-5011

April 15, 1947

**BY:** C. C. McCULLOH, Attorney General

**TO:** Robert L. Thompson Engineer Electrical Administrative Board P. O. Box 386  
Albuquerque, New Mexico

{\*33} We wish to acknowledge receipt of your letter of April 11, 1947, wherein a request was made for an official opinion on the action of the last Legislature in regard to the budget of your board for the next two fiscal years.

From such inquiry I presume you desire to know what, if any, monies will be available for paying expenses of your board, in view of the fact no provision was made or budget set up in the General Appropriation Act as passed, insofar as the Electrical Administrative Board is concerned.

Section 51-2218 of the New Mexico Statutes, 1941 Compilation, provides in part as follows:

"The board shall deposit all moneys received by it from fees in accordance with the provisions of this Act, with the State Treasurer, who shall keep such money in a separate fund, to be known as the "Electrical Administrative Fund," and said moneys so deposited in said special fund are hereby **appropriated** for the purpose of paying the expenses of the board in administering this Act \* \* \*."

Our Constitution or statutes do not require that all appropriations be in the General Appropriation Act, and as a matter of course, many appropriations are always found outside of the General Appropriation Bill. Therefore, the mere fact that such revenues are not referred to in the General Appropriation Act has no significance whatsoever in determining whether or not these funds shall be available to your board. (See Attorney General's Opinion No. 4311, written by Harry L. Bigbee on June 4, 1943, so holding.)

It is thus evident that the board may use such funds as are necessary in paying expenses of the board from the fees collected, provided the aforementioned language is definite enough to constitute an appropriation by the Legislature.

Article 4, Section 30 of the New Mexico Constitution provides:

"Except interest or other payments on the public debt, money shall be paid out of the treasury only upon appropriations made by the Legislature. No money shall be paid therefrom except upon warrant drawn by the proper officer. Every law making an appropriation shall distinctly specify the sum appropriated and the object to which it is to be applied."

The Court, in the case of *Gamble v. Velarde*, 13 P. 2d 599, 36 N.M. 262, in passing on a general statute which 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 fact of the statute. Precedents in this jurisdiction favor {34} 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 this question, in view of the language of Article 4, Section 30 of the New Mexico Constitution, stated:

"If 'sum' shall mean an amount to be expressed in dollars and cents, defendants 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 excessive encroachments. When, as here, there is also a dedicated fund which cannot be exceeded the Constitutional principle is not involved."

In view of the foregoing, it is my opinion that Section 51-2219 of the 1941 Compilation is, in itself an appropriation act, and does not violate article 4, Section 30 of the New Mexico Constitution; that all funds, or so much thereof as are necessary, derived from fees, may be used for paying expenses of the Electrical Administrative Board in carrying out said Act.

Trusting the aforementioned satisfies your inquiry, I am

By ROBT. V. WOLLARD,

Asst. Atty. General