

Opinion No. 48-5129

February 16, 1948

BY: C. C. McCULLOH, Attorney General

TO: Mr. J. D. Hannah, State Comptroller, Santa Fe, New Mexico.

{*130} This will acknowledge receipt of your letter of Feb. 11, 1948 in which you request the opinion of this office as to whether the State Board of Finance may authorize the New Mexico School for the Deaf to use funds, appropriated for specific purposes, for other than the purposes specified.

The particular items involved appear at page 543, Chapter 221, Laws of 1947, and are as follows:

"(5) For donations to retired instructors, for each year, \$ 2800.00.

(6) To acquire real estate (36th Fiscal Year only), \$ 13,000.00."

Nowhere under the section making the appropriations for the New Mexico School for the Deaf does it appear that the State Board of Finance is given authority to readjust the itemization.

Section 30, Article 4 of the New Mexico Constitution provides that no money shall be paid out of the Treasury except upon appropriation by the Legislature, and that every law making an appropriation must distinctly specify the sum appropriated and the object to which it is to be applied. This provision is designed to insure legislative control of the public purse. (Gamble v. Velarde, 36 N.M. 262, 13 P. 2d 559.)

Specific appropriations cannot be altered by the Board of Finance in the absence of a statutory or constitutional authorization.

"The executive branch is not invested, in the absence of statutory or constitutional authorization, with the right to make or alter appropriations. * * *." (59 C.J. p. 239, Sec. 382.)

I find no constitutional or statutory authorization for transferring or altering of a specific appropriation by the Board of Finance in this particular instance.

In view of the foregoing, I am of the opinion that it would not be permissible for the Board of Finance to authorize the New Mexico {*131} School for the Deaf to use funds specifically appropriated for pensions and for acquiring property for purposes other than those specified.

By WILLIAM R. FEDERICI,

Asst. Atty. General