

Opinion No. 51-5368

May 29, 1951

BY: JOE L. MARTINEZ, Attorney General

TO: Mr. Alva A Simpson Director Department of Public Welfare Santa Fe, New Mexico

RE: Interpretation of General Appropriations Act (Committee Substitute for HB 300) and Ch. 181, Laws of 1951, 20th Legislature, as applied to funds appropriated for the Department of Public Welfare.

OPINION

{*46} I have your letter of May 2, 1951, asking for my opinion on questions regarding the application and effect of the General Appropriation Laws (Committee Substitute for HB 300, and also Ch. 181, Laws of 1951) recently passed by the Twentieth Legislature, which laws provide for the appropriation of monies for administrative expenses for the State Government. The General Appropriations Act awards an appropriation of \$ 1,000.00 to the Department of Public Welfare. At the same time it makes a charge of \$ 150,550 for general administrative overhead to be paid by the Department into the General Funds for Administrative costs of the State government. Considering the General Appropriation Act, Committee Substitute for H.B. 300, the following sections should be considered.

Section 22 further provides that if any items included therein are appropriated **in special acts** that the appropriations in the said special acts shall apply and the comparable appropriations in the general act shall be null and void.

The funds for the Department of Public Welfare are handled in accordance with § 73-131, New Mexico Statutes Annotated, 1941, that is, the monies are paid over to the State Treasurer and placed in a Social Security Fund.

The funds of the Department are derived from four sources of revenue in New Mexico:

(a) Revenue from intoxicating liquors. See § 61-806, New Mexico Statutes Annotated, 1941, which act provides that all amounts shall be transferred to the Social Security Fund and that said funds shall be used by the Department of Public Welfare.

(b) Revenue from the Compensating Use Tax (76-1530, New Mexico Statutes Annotated, 1941) which provides at the end of each month {*47} that all funds remaining in the compensating tax receipts fund shall be by the State Treasurer **covered into the state social security fund.**

(c) Revenue from cigar and cigarette tax funds which are specifically . . . "ear-marked for old-age assistance", and for the operation, maintenance, and expansion of the home for

the aged and chronically ill, at Las Vegas, New Mexico, exclusively to be indicated by law in the Appropriations Act covering said departments. (§ 75-1614, New Mexico Statutes Annotated, 1941, as amended.)

(d) Revenue from the Corporation Franchise Tax (§ 54-1212, New Mexico Statutes Annotated, 1941) which act provides that all amounts paid the Corporation Commission shall be paid to the State Treasurer and by the State Treasurer covered into the relief fund. This act limits the amount of its enforcement to \$ 3600.00 per annum; the balance is all to be placed in said relief fund.

In addition, the Federal Government has made an appropriation for the purpose of enabling each state to furnish financial assistance to aged and needy individuals.

(U.S. Code, Title 42, Sec. 303). **Payment to States: Computation of amounts.**

(a) "From the sums appropriated therefor, the Secretary of the Treasury shall pay to each State which has an approved plan for old-age assistance . . . an amount, which shall be used as old-age assistance, equal to the sum of the following proportions of the total amounts expended during such quarter. . . .

(A) Two thirds of such expenditures, not counting so much of any expenditure with respect to any month as exceeds the product of \$ 1500 multiplied by the number of such individuals who received old-age assistance for such month, plus

(b) One-half of the amount by which such expenditures exceed the maximum which may be counted under such clause (A); and to (2) An amount equal to one-half of the total of the sums expended during such quarter as found necessary by the Administrator for the proper and efficient administration of the State plan, which amount shall be used for paying the costs of administering the State plan or for old-age assistance, or both, and for no other purpose."

This "matching of funds" by the Federal Government is subject to constant audit and strict interpretation by the Federal Security Agency.

It thus appears that appropriations for the Department of Public Welfare are provided for by special acts. Hence Section 22 of the General Appropriations Act applies and the appropriation of § 1,000 provided therein becomes null and void. Since the proviso in the appropriation for the Department of Public Welfare contained in the General Appropriations Act, charging the Department with \$ 150,550 for general administrative costs, would make the amount available for the Department \$ 150,550 less than what has been provided for it by special acts. This feature of the General Appropriations Act is likewise void so far as the Department of Public Welfare is concerned.

Senate Bill 295, being Ch. 181, Laws of 1951, provides as follows:

"Section 1. That there is hereby appropriated for the year beginning July 1, 1951, and for each year thereafter, from the gross receipts of all monies **appropriated or earmarked for special specific** (emphasis supplied) purposes or governmental functions, a sum not to exceed five percent (5%) of the budgeted expenditures for the second year of the current and succeeding bienniums, as reported in the biennial budget report of the State Budget Director of the departments or agencies having such earmarked monies, as the share of each of said departments in the general administrative costs of {*48} the state government for each year of the succeeding biennium, for administrative expenses of the state government, its officers, agencies, departments and institutions; provided, that the five percent (5%) appropriation herein provided for shall be determined on the basis of the regular budgeted expenditures of said departments or agencies, exclusive of said general administrative cost of the state government.

"Section 2. That the amounts so to be appropriated, not to exceed said five percent (5%), shall be fixed and determined by the Governor and State Board of Finance, and shall be paid by the Departments or agencies into the General Fund.

Section 3. Provided that no amount shall be appropriated from any fund under the provisions hereof in those cases in which such appropriations would result in withholding by the Federal Government of funds for which the department or agencies concerned would otherwise be eligible.

Section 4. That it is necessary for the preservation of the peace, health and safety of the inhabitants of the State of New Mexico that the provisions of this act shall become effective at the earliest possible time, and therefore an emergency is declared to exist, and this act shall take effect and be in full force and effect from and after its passage and approval."

This office has been informed by the Department of Public Welfare that funds withdrawn from the Department and used for the general expenses of the state government cannot be matched by federal funds. The Department of Public Welfare received its information from Mr. Val M. Keating, Regional Representative of the Bureau of Public Assistance. A copy of his communication to Mr. Simpson is attached herewith.

It appears from the letter of Mr. Keating that if the Department of Public Welfare contributed \$ 150,550, being the amount specified in the General Appropriations Act, as its contribution for the general administrative costs of the State government that such contribution will result in withholding by the Federal government of funds for which the Department would otherwise be eligible. It is axiomatic that withholding of 5% of the funds otherwise available for the Department, as its contribution to the general administrative costs of the state, would result in a contribution by the Department of an amount in excess of \$ 250,000. This is based upon the tentative budget of the Department of Public Welfare.

Any such contribution would likewise result in withholding by the Federal government of funds for which the Department would otherwise be eligible. Any contribution of funds by the Department of Public Welfare for general administrative overhead would likewise result in withholding by the Federal government of funds for which the department would otherwise be eligible.

In view of this, it is my opinion that the Department of Public Welfare is exempted from the 5% contribution otherwise assessed against the monies earmarked for it by special acts.