

## Opinion No. 51-5383

July 6, 1951

**BY:** JOE L. MARTINEZ, Attorney General

**TO:** L. W. Leibrand, Chairman New Mexico Public Service P. O. Box 561 Santa Fe, New Mexico

{\*70} In reply to your letter of June 12 in which you requested an opinion as to whether or not the transfer {\*71} of \$ 200,000 from the Utility and Liquefied Petroleum Fund to the State General Fund is legal or should said transfer be rescinded on the strength that it does not comply with provisions of § 72-609, NMSA, 1941.

I am familiar with the provisions of §§ 72-609 and 71-812, NMSA, 1941. After checking the 31st fiscal year, at which time the Board of Finance returned to the Public Utility Fund a transfer of \$ 15,000 made from the Utility Fund to the General Fund, I find that the Finance Board and no authority from the Legislature during the 31st fiscal year to make such a transfer for the reason that the Finance Board had to return this money to the Public Utility Fund. Section 72-609, NMSA, was passed by the New Mexico Legislature as Chap. 84, Sec. 45, Laws of 1941.

Section 71-812, NMSA, p.s., was passed by the Legislature in 1947 as Chap. 214, Sec. 10 and Chap. 122, Sec. 3. It specifically provided for the disposition of all funds in the Liquefied Petroleum Gas Fund. Thus, since 1941, when the Public Utility Fund was created, and since 1947, when the Liquefied Petroleum Fund was established, these funds were "earmarked".

However, the 20th Legislature, on p. 39 of Committee Substitute for HB 300, passed the Appropriation Bill for the 40th and 41st fiscal years. Said Sec. 25, on p. 39 of Committee Substitute for HB 300, reads as follows:

"Section 25. There is hereby appropriated to the State General Fund \$ 175,000.00 from the Public Utility Fund and \$ 25,000.00 from the Liquefied Petroleum Fund and \$ 10,000.00 from the Wind Erosion Fund and \$ 96,085.17 from the Curry County Park Fund."

Since the Legislature created the Public Service Commission and provided as to how it should raise its funds and distribute the same, it had the authority to provide use of such fund and has the authority thereafter to provide for a different use. The 20th Legislature saw fit to provide for a different use of these funds and ordered the transfer of said \$ 200,000 under Committee Substitute for HB 300. The Legislature has the power to give and to take in these circumstances. That is what has been done here. It is my opinion that Committee Substitute for HB 300 supersedes § 72-609 of NMSA, 1941, and § 71-812, NMSA, 1941, p.s., to the extent that the funds are to be used as indicated in the

1951 legislation and that the Legislature had the legal authority to transfer, this \$ 200,000 from the Utility Fund and Liquefied Petroleum Fund to the State General Fund.

Trusting that this fully answers your inquiry, I remain