

Opinion No. 52-5574

August 11, 1952

BY: JOE L. MARTINEZ, Attorney General

TO: Honorable Tom Wiley Superintendent of Public Instruction State Department of Education Santa Fe, New Mexico

{*283} Recently your requested an opinion from this office upon the question whether it would be legal for the Board of Finance to carry forward certain unexpended budget balances for the fiscal year 1951-52, for the Department of Education, to be spent by the Department of Education for certain purposes, outlined in your request.

Thus, to mention one such item, you report that in the contingent salary fund there is an unexpended budget balance of \$ 12,096.96. It appears that the board will face certain items of expense during the coming year which were not foreseen when the budget was provided by the Legislature during the 1951 session, and the inquiry is thus directed towards the question whether it is legal for the Board of Finance to carry forward these balances, in lieu of having them revert to the General Fund or to apply upon the department's budget for the ensuing year.

Your attention is expressly directed to the provisions of Sec. 13 of the General Appropriations Account for 1951. This Act provided the appropriation for the Department of Education as well as other State Departments. Section 13 reads as follows:

"At the end of any fiscal year the unused balance of appropriations for state departments which are paid out of the 'Appropriations Account' shall be credited by the State Auditor to the said 'Appropriations Account,' except as otherwise provided, but no department shall spend in any year more than the amount appropriated for that year nor in excess of funds available therefor. At the end of the fiscal year the balance in the 'Appropriations Account,' and the unappropriated funds shall be distributed pro rata among the funds for which appropriations are herein made and such distribution shall be applicable to such appropriations for the succeeding fiscal year, **or such balances may be placed in a reserve account to be allocated or appropriated annually by the State Board of Finance.**"

It is quite evident, therefore, that the Legislature has sanctioned the creation of reserve accounts by the Board of Finance out of unexpended balances and it is quite proper for the Board to carry forward these balances, such balances to be spent as allocated by the Board of Finance.

I trust that this fully answers your inquiry.