

Opinion No. 52-5588

September 11, 1952

BY: JOE L. MARTINEZ, Attorney General

TO: Mr. Edward M. Hartman State Comptroller Santa Fe, New Mexico

{*294} You have requested the opinion of this office as to whether the State Board of Finance, under Section 7-401, N.M.S.A., 1941 (Supplement) has the same control over the budget of the State Highway Commission as it does over budgets of other state departments, boards or agencies, and, if not, wherein does it differ?

As you pointed out, Article V, Section 14 of the Constitution of New Mexico (N.M.S.A. 1941 'Supplement') states that the State Highway Commission

"shall have complete charge of all matters pertaining to the expenditure of state funds for the construction, improvement and maintenance of public roads and bridges."

Matters pertaining to state highways, public roads and bridges is the principal, if not the sole, function of the Commission. It now, by the same constitutional amendment, has also the policy-making power in these matters. Its funds are all derived from fixed appropriations made for this purpose only. These sources are:

Section 58-250 N.M.S.A., 1941 Proceeds from Debentures, "for the purpose of constructing and improving highways.";

Section 68-1214, Motor Fuels Tax, "for the maintenance, construction and improvement of public highways, and to meet federal allotments under federal aid road laws";

Section 68-1346, Mileage Tax, "for the maintenance, repair and construction of public highways";

Section 68-231, Registration Fees, "45% thereof shall be placed to the credit of the state road fund";

Section 58-243, Property Tax, "for the survey, location, construction and improvement of highways and bridges."

Since the Constitution was amended to give the Highway Commission complete charge of all matters pertaining to the expenditure of state funds for this purpose, any act of the legislature permitting another agency to supervise, control or prohibit expenditures of the Commission would seem to be inconsistent with the amendment. It is a well recognized principle of law that:

"The Constitution, as the highest and most recent expression of the law-making power, operates to repeal or supersede not only all statutes that are expressly enumerated as repealed, but also all that are inconsistent with the full operation of its provisions. So also a constitutional provision which is a revision of the entire subject matter of, and constitutes a substitute for, a statute will supersede {295} such statute." 16 C. J. S. page 91, 92.

No further legislation is required to carry into effect the provision of Article V, Section 14 here under discussion. *State v. Rogers*, 31 N.M. 485, and *Delgado v. Romero*, 17 N.M. 81, where the court, at page 86 held:

"If a constitutional provision, either directly or by implication, imposes a duty upon an officer, no legislation is necessary to require the performance of such duty."

The amendment must, of course, be harmonized, if possible, with the other provisions of the Constitution.

Article III, Section 1 of the Constitution provides:

"The powers of the government of this State are divided into three distinct departments, the legislative, executive, and judicial, and no person or collection of persons charged with the exercise of powers properly belonging to one of these departments, shall exercise any powers properly belonging to either of the others, except as in this Constitution otherwise expressly directed or permitted."

The amendment, Article V, Section 14, has conferred upon the Commission powers formerly held by the executive and legislative branches of the government. This is permitted by Article II, Section 1 above quoted, i. e.,

"except as in this Constitution otherwise expressly directed or permitted." In *Re Atchison T. & S. F. Ry. Co.*, 37 N.M. 194.

We find no provisions of the Constitution indicating any reservation in either the legislative or the executive from the power granted to the Highway Commission to have complete charge of the expenditure of its funds, except Article IV, Section 30, which reads:

"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."

As above set forth, all of the funds of the Highway Commission have been appropriated by laws providing the object to which the appropriation is to be applied, each clearly relating to public roads and bridges.

Besides construing the amendment harmoniously with the rest of the Constitution, it cannot be said to have repealed all statutes dealing directly or indirectly with the powers of functions of the Highway Department. Although generally it may be said that laws inconsistent with it are superseded, each case must stand upon its own merits and the particular conditions, and each statute must be separately construed.

Section 7-401, N.M.S.A., 1941 (Supplement), unlike 7-402, has for its purpose the control of expenditures under existing appropriations, not the determination of future financial needs. Since the adoption of Article V, Section 14, it would seem the legislature would only be interested in the latter section. Section 7-401 provides after the submission of the budget:

"Such budget shall be subject to the approval of the State Board of Finance, and no expenditures shall be made by any such office, department, bureau or institution for the fiscal year covered by said budget until said budget shall have been approved by the State Board of Finance; provided, that any action of the State Board of Finance shall be subject to review and modification by the Governor."

This provision would clearly place the control of the expenditures in the hands of the State {^{*296}} Board of Finance or the Governor. It cannot be read consistently with Article V, Section 14, of the Constitution which gives the Highway Commission **complete** charge of all matters pertaining to expenditures, and if construed as applicable to the State Highway Commission, could only be unconstitutional.

We conclude, therefore, that neither the State Board of Finance nor the Governor can exercise any control over the expenditure of highway funds. The approval of the State Board of Finance is not necessary for the expenditure of these funds for the fiscal year covered by the budget, nor would any action of the Governor in attempting to review or modify the budget in any way effect the right of the Commission to proceed to expend the funds under its complete charge as it determined and for the purposes for which they were appropriated. In this respect, its control differs from that of other state offices, departments, bureaus and institutions.