

Opinion No. 55-6093

February 1, 1955

BY: RICHARD H. ROBINSON, Attorney General

TO: M. A. Otero, Member, Board of Trustees Springer Industrial School, Santa Fe, New Mexico

In your letter dated January 27, you state that an emergency exists at the Industrial School requiring the expenditure of \$ 30,000 additional for the balance of this fiscal year. This is in addition to the appropriation from the General Fund of \$ 112,000 for the Institution. The Board of Finance is willing to approve a budget for that amount to be obtained from the income from State lands allotted to the Institution, upon condition that the additional budget meets all legal requirements. You request our opinion concerning the legality of the use of the Institution's Income Fund for meeting the emergency during the balance of the present fiscal year.

Ch. 156, Laws of 1953, being the General Appropriation Act, appropriates the sum of \$ 112,000 from the State General Fund for the Industrial School for Boys. This Appropriation Act does not mention the School's Income Fund and if the Income Fund is otherwise appropriated, the Board of Finance could authorize an increased budget for the Institution.

Art. IV, § 30, of the Constitution, provides as follows:

"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."

§ 11-2-54 exempts penal institutions of the State from the requirement of depositing its funds received in the State treasury. Such institutions likewise are not required to submit vouchers to the State Auditor but may handle their own funds through a bonded treasurer.

§ 7-1-23 of the 1953 Compilation provides as follows:

"All income and current funds created by this act [§§ 7-1-16 -- 7-1-23] for the common schools and various state institutions as enumerated in § 3 [§ 7-1-18] of this act shall be, by the State Auditor, from time to time, transferred to the credit of the schools and institutions, to be used as provided by law for the support and maintenance of said schools and institutions, subject, however, to the limitations as provided for in § 6 [7-1-20] of this act."

If this section is sufficient to constitute an appropriation of the Income Fund of the Institution, there is no prohibition against the Institution using the money based upon a budget for that purpose, approved by the State Board of Finance. *State vs. Llewellyn*, 23 NM 43, 167 P. 414; *Regents of Univ. of N. Mex. vs. Graham*, 33 NM 214, 264 P 953.

It is apparent that the Legislature intended that all income funds be transferred to the institution entitled thereto to be used for current expenses of support and maintenance of said institution. The sum of the amount intended for use is the total income fund and can be easily ascertained and the purpose or object of the appropriation is for support and maintenance. In *Gamble vs. Velarde*, 36 NM 262, this language is used:

"The 'sum appropriated' must also be distinctly specified. That is not to say that the sum to be 'paid out' or expended must be accurately determined in advance. That a maximum amount or limit be fixed, is all that the language requires."

This language was in connection with the foregoing constitutional provision regarding appropriations.

It is therefore our opinion that the income funds from lands granted for the use of the Institution are sufficiently appropriated under § 7-1-23 of the 1953 Compilation and may be used for current expenses of the Institution in an amount and according to a budget approved by the State Board of Finance, within the available funds from rentals from the State lands of the Institution.

By C. C. McCulloh

Assistant Attorney General