

Opinion No. 55-6157

May 10, 1955

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. D. M. Smith, Jr., State Comptroller, Santa Fe, New Mexico

In your letter of April 29, 1955 you inquire as to whether the charge of 5% for general administrative overhead expense is a part of the total appropriation for each office or is in addition to the total appropriation. The item in question is a portion of Section 8, Chapter 287, Laws 1955, and provides as follows:

"There shall be included in each budget of departments, commissions, boards and agencies exclusive of the State Highway Department and the State Land Office, an item for 'general administrative overhead' expense equal to five per cent (5%) of the total budget; provided that any department which makes or has made other arrangements for paying administrative overhead costs shall be excepted from this provision. Provided further that the budgets for general administrative overhead expense shall be paid each year into the State General Fund."

The above language could lend itself to either interpretation. It therefore becomes necessary to attempt to determine the intent of the Legislature in enacting this provision.

The line item appropriations for practically all of the various departments and agencies of the State show only one place where this amount could properly be budgeted. This is in the item "Other Operating Expense." This item is also subject to fixed charges known to the Legislature at the time of making the Appropriations Bill. The two major items that fall into this category are maintenance, assessments and matching contributions to the Public Employees' Retirement Fund. Without considering these latter two items, when the 5% factor is subtracted from the total appropriation for other operating expenses, in practically all instances the various agencies are left with considerably less appropriated than was appropriated to them in the preceding biennium. In at least one instance, that of the Secretary of State, the 5% item amounts to \$ 3,913.25 where the total appropriation for other operating expenses is only \$ 2,800.00. When the fixed charges are considered, the appropriation for other operating expenses of each agency is not sufficient to include such expenses and the 5% charge.

Likewise, the Legislature in determining appropriations to be made, had before it the proposed State Budget submitted by the Governor on February 3rd. Only in the budgets of some of the Licensing Boards was there included any item for this purpose. It is apparent that the budget as submitted was not drawn or presented with this provision in mind.

In determining legislative intent, it is an elementary rule that if two constructions are possible, statutes will be construed in the most beneficial way which their language will

permit to prevent absurdity, hardship, or injustice, to favor public convenience and to oppose all prejudice to public interests. *State vs. Llewellyn*, 23 N.M. 43, 167 Pac. 414; *Certiorari Denied* 245 U.S. 666, 62 Law Ed. 538, 38 Sup. Ct. 63; *State vs. Southern Pacific*, 34 N.M. 306, 281 Pac. 29. They will not be construed in a manner as will tend to defeat their useful purpose. *Fisherdick vs. San Juan County Board of Education*, 30 N.M. 454, 236 Pac. 743.

In view of the fact that the Legislature was not apprised of this item in the budget as submitted by the Governor, and in view of the further fact that in making appropriation to the various departments and agencies of the State, the Legislature did not provide a sufficient amount in the only item from which this 5% charge could be budgeted, it is the opinion of this office that the 5% charge for general administrative overhead, amounts to an additional appropriation for each agency subject to this charge. To hold otherwise would be to violate the principle of the cases cited, for a contrary ruling would certainly result in hardship, and in the instance of some departments of the State, result in an absurdity.

You further ask whether the words "departments, commissions, boards and agencies" include State institutions. In view of the fact that the word "department" in its general sense signifies one of the three largest divisions of government, (Article 3, Section 1, Constitution of New Mexico) and in view of the fact that the purpose of the provision was to require **all** agencies to pay their fair share of the general costs of State government, it is the opinion of this office that the section is applicable to State institutions.

By: W. R. Kegel

Assistant Attorney General