

Opinion No. 55-6264

August 29, 1955

BY: RICHARD H. ROBINSON, Attorney General

TO: Honorable D. M. Smith, Jr., State Comptroller, State Capitol Building, Santa Fe, New Mexico

Recently you requested our opinion concerning the following language in the 1955 General Appropriations Act, which is Chapter 287 of the 1955 Session Laws, and which reads as follows:

"Such amounts as needed for administrative and other purposes shall be appropriated from revenue of all sources designated by existing laws, together with federal funds and other sources by budgets prepared annually and submitted for approval of the State Board of Finance."

You ask whether this language means that all revenues and unexpended surpluses are appropriated by this language.

We will concede that a superficial reading of this language would lead one to so believe. However, a working knowledge of the laws of New Mexico, as they now exist, would clearly prohibit the construction suggested. The Enabling Act provides for the income and disposes of the same to the schools. A great many other income sources are earmarked for the various departments for which they are passed. The greatest impediment, however, is that the Constitution requires, in Article 4, Section 30, 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.**" (Emphasis ours)

This obviously means that money must be actively and actually appropriated from the State Treasury in any bill. The General Appropriation Bill of 1955, however, does not appropriate the entire funds of the State to the Department of Public Welfare, but does set up specific categories and does appropriate moneys which have been appropriated by preceding legislation.

It is the duty of this office and the courts to place a constitutional construction upon the language of the Legislature where such construction can be found. In the event we should construe the legislative intent to be to give the Finance Board, a branch of the Executive Department, the right to distribute all the money coming into the State Treasury, such a construction would be in violation of Article 3, Section 1 of the New

Mexico Constitution or the so-called separation of powers clause. The power of appropriation is strictly a legislative function and cannot be delegated to the executive.

Therefore, it is the opinion of this office that the language contained in Chapter 287 of the 1955 New Mexico Session Laws, and quoted above, does not constitute an appropriation of all the revenues of the State of New Mexico, but only all of the revenues heretofore designated and earmarked for the Public Welfare Department.

By Fred M. Standley

Assistant Attorney General