

## Opinion No. 56-6479

June 25, 1956

**BY:** RICHARD H. ROBINSON, Attorney General

**TO:** Honorable Charles G. Sage, Major General, AGC, Office of the Adjutant General, Santa Fe, New Mexico

We have your letter of June 19 wherein you request an opinion on the question of whether certificates of indebtedness must be issued to obtain funds for an emergency declared by the Governor, requiring employment of the National Guard when the costs of that emergency exceed \$ 5,000.00, or whether unappropriated funds can be used when they are available to defray expenses in excess of \$ 5,000.00. You state that this question has arisen in connection with Governor Simms' recent proclamation of emergency calling a portion of the National Guard of New Mexico into the service of the state to aid in traffic control on the highways.

This question involves the construction of § 9-6-3, N.M.S.A., 1953 Compilation, the pertinent part of which reads as follows:

"The state treasurer, upon presentation to him . . . shall pay such vouchers and pay rolls out of any moneys available in the state treasury not otherwise appropriated, should the vouchers and pay rolls for such service, supplies and materials not exceed in amount the sum of five thousand dollars (\$ 5,000.00).

If there be no moneys available in the state treasury not otherwise appropriated, or if the vouchers and pay rolls for such service, material and supplies exceed the amount of five thousand dollars (\$ 5,000.00) the state treasurer shall certify such facts to the governor, who shall thereupon inquire into and make an estimate of the total probable cost necessary to be incurred for all purposes, in connection with or to accomplish the purpose for which such troops were called into active service, and if he deems it necessary and prudent in order to provide for the public defense, that such expenses be incurred, and that it is necessary to create an indebtedness for the purpose of paying the same, he shall by proclamation declare an emergency to exist requiring the creation of an indebtedness under Article IX, Section 7 of the state Constitution, in order to suppress insurrection or to provide for the public defense, and shall order the issuance of certificates of indebtedness in such amount as he shall deem necessary or required to provide funds for the payment of any and all expenses and costs incident to or connected with such emergency."

Section 7 of Article IX of our State Constitution reads as follows:

"The state may borrow money not exceeding the sum of two hundred thousand dollars in the aggregate to meet casual deficits or failure in revenue, or for necessary

expenses. The state may also contract debts to suppress insurrection and to provide for the public defense."

There is no question in our minds that the traffic emergency has become so hazardous and menacing to the welfare of all of the people of the State of New Mexico that without question the traffic emergency exists, and the proclamation of the Governor is timely and necessary.

We call attention to the case of *State v. French*, 44 N.M. 169, a case brought by the State of New Mexico on the relation of Russell C. Charlton, Adjutant General, against Rex French, State Treasurer of the State of New Mexico, to require respondent to show cause why he should not honor a voucher and issue a certificate of indebtedness, wherein the writ of mandamus was issued in the alternative. In making the writ of mandamus absolute, the Court said:

"The power conferred upon the Governor by Sec. 93-116 to organize the militia and the power conferred on him by Sec. 93-137 to meet emergencies is ample for every situation that may present itself. It gives to the Chief Executive of the State the fullest authority to reorganize and equip the National Guard and to call to his assistance in any contingency that may arise, a force sufficient in numbers and properly equipped, to safeguard the welfare and health of the people and provide for their defense."

As to the intent of the Legislature in § 9-6-3, N.M.S.A., 1953 Compilation, the pertinent part of which is hereinbefore quoted, undoubtedly it is that the Governor has been given the discretion to decide what is an emergency, and if he deems it necessary and prudent in order to provide for the public defense that such expenses be incurred in order to protect the lives or the property of the citizens, that he may without issuing a certificate of indebtedness, if funds are available in the general fund, expend additional sums to pay for the maintaining of the militia. I am informed we have in the general fund of the State of New Mexico approximately Two Million Dollars of unappropriated funds. It is absurd to believe that it was the intent of the Legislature to require in every case the incurring of additional expense, including the payment of 3% interest on certificates of indebtedness, when there is available for such purpose ample unappropriated funds in the general fund. Such an interpretation would impose an unnecessary burden on the taxpayers of New Mexico.

A succinct statement of the rule of law governing the interpretation of statutes is found quoted in the opinion of the New Mexico Supreme Court in the case of *State v. Llewellyn*, 23 N.M. 43, 167 P. 414. At page 69 of said report, our Supreme Court said:

"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. Sutherland on Statutory Construction, p. 913."

Our Supreme Court goes on to say at pages 69 and 70 as follows:

"Word and clauses in different parts of a statute must be read in a sense which harmonizes with the subject matter and general purpose of the statute. No clearer statement has been or can be made of the law as to the dominating influence of the intention of a statute in the construction of all its parts than that which is found in Kent's Commentaries:

"In the exposition of a statute the intention of the lawmaker will prevail over the literal sense of the terms; and its reason and intention will prevail over the strict letter. When the words are not explicit, the intention is to be collected from the context, from the occasion and necessity of the law; from the mischief felt, and the remedy in view; and the intention is to be taken or presumed according to what is consonant with reason and good discretion. If upon examination the general meaning and object of the statute be found inconsistent with the literal import of any particular clause or section, such clause or section must, if possible, be construed according to that purpose." Sutherland on Stat. Const., § 370."

The language of § 9-6-3, N.M.S.A., 1953 Compilation, in order to accomplish a reasonable and not an absurd result, would require the following steps to be taken after there has been a determination by the Governor that an emergency existed requiring the use of troops.

1. Submission of proper vouchers and payrolls for the payment of troops and costs incidental to their use in the service of the state.
2. Certification by the Treasurer to the Governor of the fact that either the amounts to be expended exceed \$ 5000.00, or that there is less than \$ 5,000.00 in the state treasury of unappropriated funds.
3. Preparation of an estimate by the Governor of probable cost of the emergency requiring the use of the troops.
4. Finally an optional step to be taken only if the Governor deems it "necessary and prudent" which is to make a declaration of emergency requiring the exercise of the authority provided in Section 7 of Article IX of the Constitution permitting the contraction of debt to "suppress insurrection and to provide for the public defense."
5. This step to be taken only if the Governor found it necessary to take the preceding step, which would be the issuance of certificates of indebtedness bearing 3% interest and their sale by the State Board of Finance to raise the money to pay the cost of the use of the State troops.

To hold that the language of a statute **requires** rather than **permits** the taking of steps four and five is to reach an undesirable and unreasonable result that could not logically have been intended by the Legislature.

It is the opinion of this office that so long as a determination has been made by the Governor that there is a need for the employment of the state military forces in an emergency, payment may be made of the costs of employing these troops from such unappropriated funds as may exist in the treasury so long as the procedures outlined in the steps above are followed.

By Hilario Rubio

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