

Opinion No. 56-6551

November 29, 1956

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. Dan M. Smith, Jr., State Comptroller, State Capitol Building, Santa Fe, New Mexico

We have your letter of October 8, 1956, in which you request an opinion from this office upon the following question:

Do the provisions of Section 11-6-1 apply only to the total budget or do they apply also to each separate fund and line item within a fund?

Section 11-6-1, N.M.S.A., 1953 Compilation, reads as follows:

"It shall be unlawful for the board of county commissioners, the county clerk or any other county official authorized to make purchases to disburse, expend or obligate any sum in excess of fifty per centum (50%) of the approved budget for the fiscal year during which the terms of office of any such official will expire; Provided, however, that expenditures for election expense, record books, necessary office equipment and fuel shall be excepted from the provisions of this act (11-6-1 to 11-6-5). In the event it may be deemed advisable or advantageous to contract for fuel for the entire year, proper precaution must be exercised that a sufficient supply of fuel will be on hand and available for the needs of the incoming officials, or an amount equal to the sum by which one-half the budget item has been exceeded."

We are of the opinion that the Legislature intended this provision to apply to each fund and item of the budget. This is apparent when consideration is given to the fact exceptions are made in the law that to certain items such as "election expenses, record books, necessary office equipment and fuel." In other words, these are the only items which can be purchased without considering the limitation, and even here the provision for the purchase of fuel is further limited.

Any other construction of this statute reduces the provision to a nullity. If it only applies to the overall budget, the purpose of the statute can be circumvented by the mere juggling of the funds by the means of inter-budgetary transfers. This would defeat the purpose of the law. The purpose of the law is to insure the newly elected county commission sufficient funds to carry on the county business for the rest of the fiscal year. If interbudget transfers can be used to cover an over expenditure of funds in parts of the budget, certainly in part of the budget there will be a shortage for the last half of the year.

The authority to transfer funds within budget found in § 11-1-20, N.M.S.A., 1953, is not for the purpose of circumventing the expenditure limitations of § 11-6-1, N.M.S.A., 1953.

There are limitations on the transfer authority, inasmuch as sinking fund, interest fund, road fund, or building fund cannot be transferred for use other than the specific purpose for which it was created.

If we concluded that the limitations of § 11-6-1 applied to the overall budget and not to funds and items in the budget, it would be possible to deplete the various funds so long as the overall budget was half intact. The whole purpose of budgets can be thus destroyed. By a carefully calculated scheme, it would be possible to completely cripple the county operation. Actually the provision for interbudgetary transfers and the limitation provision are not conflicting. They are to be construed together.

We are, therefore, of the opinion that § 11-6-1 applies to the various funds and items of the budget. Any emergencies which might arise can be taken care of by the provision of § 11-1-21, N.M.S.A., 1953.

By Paul L. Billhymer

Assistant Attorney General