

Opinion No. 58-102

May 20, 1958

BY: OPINION OF FRED M. STANDLEY, Attorney General Robert F. Pyatt, Assistant Attorney General

TO: Honorable Ben Chavez, Secretary, State Board of Finance, Santa Fe, New Mexico

QUESTION

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The Forest Conservation Commission enters into cooperative fire suppression agreements with landowners whereby the landowners pay the Commission fees based on the acreage desired to be protected. May the Commission place the fees in a revolving fund to be used for fire suppression and protection, or is such prohibited by Laws 1957, Ch. 235?

CONCLUSION

The Fees may be placed in the revolving fund, and they will not revert at the end of the fiscal year.

OPINION

ANALYSIS

The power of the Commission to enter into the agreements in question, and as a consequence thereof, to exact fees as consideration for the same, can't be doubted in view of Sec. 62-2-8, N.M.S.A., 1953 Comp., 1957 Supp.

We find in Sec. 62-2-11, N.M.S.A., 1953 Comp., 1957 Supp., an appropriation of \$ 30,000.00, for each of the 46th and 47th fiscal years, appropriated out of the general fund for administrative purposes. This, of course, supersedes the \$ 10,000.00 appropriation in Laws 1957, Ch. 235, Sec. 1, P. 548, by virtue of Sec. 17 of the same Session Laws and Chapter. Be that as it may, we feel a general fund appropriation for administrative purposes is hardly to be confused with fees collected (pursuant to law) from landowners for prevention and suppression of fires.

The reversion provision of Laws 1957, Ch. 235, Sec. 6A must be noted however. It provides:

"There is also hereby appropriated to the state general fund any balance remaining or accruing to the interest and sinking funds of public defense certificates, provided all such certificates have been retired. Any balance remaining to the credit of any state

board, commission or other agency shall also be covered into the state general fund at the end of each fiscal year appropriated for in this act unless otherwise provided by law. **Provided that this paragraph shall not apply to any state department participating with the federal government in any agreement whereby the federal government provides matching funds, and the grant of such funds to the department would be impaired by the requirements of this paragraph.**" (Emphasis ours).

Hence, the issue turns on the existence of federal grants and possible impairment if reversion occurs.

In 16 U.S.C.A., Sec. 564, the Secretary of Agriculture is authorized to cooperate with appropriate state officials toward forest fire suppression and prevention. And 16 U.S.C.A., Sec. 565 (P.S.) provides:

"If the Secretary of Agriculture shall find that the system and practice of forestfire prevention and suppression provided by any State substantially promotes the objects described in Section 564 of this title, he is hereby authorized and directed, under such conditions as he may determine to be fair and equitable in each State, to cooperate with appropriate officials of each State, and through them with private and other agencies therein, in the protection of timbered and forest-producing lands from fire. **In no case other than for preliminary investigation shall the amount expended by the Federal Government in any State during any fiscal year, under this section, exceed the amount expended by the State for the same purpose during the same fiscal year, including the expenditures of forest owners or operators which are required by State law or which are made in pursuance of the forest-protection system of the State under State supervision,** and the Secretary of Agriculture is authorized to make expenditures on the certificate of the State forester, the State director of extension, or similar State official having charge of the cooperative work for the State, that State and private expenditures as provided for in this section have been made. In the cooperation extended to the several States due consideration shall be given to the protection watersheds of navigable streams, but such cooperation may, in the discretion of the Secretary of Agriculture, be extended to any timbered or forest-producing lands or watersheds from which water is secured for domestic use or irrigation within the cooperative States. As amended July 25, 1947, c. 327, § 1, 61 Stat. 449." (Emphasis ours).

You will observe the federal contribution, under the quoted statute, is in terms of federal expenditures **in the state**. It does not, in terms, provide for federal expenditures **to the state**. Such distinction is significant in view of Laws 1957, Ch. 235, Sec. 6A using the language:

". . . grant of such funds **to the department**. . ." (Emphasis ours).

However, Mr. LaNue of the Forest Conservation Commission informs us that under the federal law the federal funds are paid **to the Commission**; hence, Sec. 6A, supra, becomes applicable.

Now there yet remains the issue of possible impairment of receipt of the federal grants by virtue of reversion. Let us keep in mind the practicalities. First, federal aid is geared to state expenditure. If there is no state expenditure, there is no aid. In turn, if the Commission can't place the contract fees in the revolving fund and avoid reversion, the landowners obviously are not going to enter into the contracts - hence, there would be no fees to expend for the prevention and suppression of forest fires.

We conclude reversion would impair the federal assistance. The revolving fund may be created.