

Opinion No. 58-138

June 24, 1958

BY: OPINION OF FRED M. STANDLEY, Attorney General Howard M. Rosenthal,
Assistant Attorney General

TO: Mr. Larry W. Waterman, Executive Secretary, New Mexico Commission on Youth,
Santa Fe, New Mexico

QUESTION

FACTS - QUESTION

The Commission on Youth received \$ 369.32 as a gift from a private person or persons during the current fiscal year. The main purpose of the contributions was for film purchase. The money was deposited with the State Treasurer and paid out on approval duly obtained of the State Budget Director. The Commission on Youth is not required to pay the 5% administrative charge out of its legislative appropriation.

Is the Commission on Youth required to pay 5% (\$ 18.48) as an administrative charge on the above gifts?

CONCLUSION

No.

OPINION

ANALYSIS

Chapter 235, Laws 1957, sets up the following appropriation for the Commission on Youth:

"Commission on Youth: 1. To apply on salaries and other administrative expense
"Forty-Sixth Fiscal Year, \$ 7,800; Forty-Seventh Fiscal Year \$ 7,800

Provided that funds from other sources are hereby appropriated subject to annual budgets submitted for the approval of the department of finance and administration."

Section 5 of Chapter 235 reads:

"For each of the forty-sixth and forty-seventh fiscal years, **appropriations are made for each of the following boards from revenues provided therefor by law**, subject to an annual budget for each board submitted to and approved by the department of finance and administration. Each board shall budget and pay **into the state general fund five**

per cent of the total amount appropriated to it for each fiscal year. The department of finance and administration shall not increase the total budgets of the boards in this section except in cases of emergency brought to the attention of the department of finance and administration."

(Emphasis ours).

Section 6 C of Chapter 235 reads:

" **There shall be included in each budget** of departments, commissions, board, and agencies, exclusive of the state highway department, department of game and fish and the state land office, **an item for 'general administrative overhead' expense equal to five percent 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." (Emphasis ours).

A reading of the above makes clear that the 5% is not exacted from the Commission on Youth because "other arrangements for paying administrative overhead costs" have been made pursuant to § 6 C of Chapter 235, Laws 1957.

Hence, this office is of the opinion that no 5% charges shall be exacted out of gifts to the Commission on Youth.