

Opinion No. 58-216

October 30, 1958

BY: OPINION OF FRED M. STANDLEY, Attorney General Hilton A. Dickson, Jr.,
Assistant Attorney General

TO: Mrs. Inez B. Gill, Fiscal Analyst, Legislative Finance Committee, State Capitol,
Santa Fe, New Mexico

QUESTION

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"Can Game and Fish Department funds be legally spent for out-of-state travel by state game and fish department personnel for purposes of advertising New Mexico's game and fish resources?"

CONCLUSION

No.

OPINION

ANALYSIS

The expenditure of monies appropriated for use by the Department of Game and Fish is specifically provided for in Sec. 53-1-8, N.M.S.A., 1953 Comp. Herein, we find ultimate responsibility for spending is delegated to the State Game Commission; but, also, there is set out by the aforesaid section, the limited purposes for which game protection funds may be used. The section provides in part:

"The state game commission shall have general control over the collection and disbursement of all moneys collected or received under the state laws for the protection and propagation of the game and fish, which money shall be paid over to the state treasurer to the credit of the game protection fund and shall not be transferred to another fund; and this act shall be guaranty to the person who pays for hunting and fishing licenses and permits, that the money in said fund shall not be used for any purpose other than as provided in this act, and the state game commission shall have authority:

To establish and, through the state game and fish warden, to operate fish hatcheries for the purpose of stocking public waters of the state, and to furnish fish fry and fingerlings to stock private waters, receipts from such sources to go into the game protection fund;

To declare closed seasons in any specified locality or localities, and on any species of game or fish threatened with undue depletion from any cause;

To establish game refuges for the purpose of providing safe sanctuaries in which game may breed and replenish adjacent hunting ranges; it being the purpose of this provision to establish small refuges rather than large preserves, or to close large areas to hunting;

To purchase lands for game refuges, where suitable public lands do not exist; to purchase lands for fish hatcheries; and to purchase lands to be maintained perpetually as public hunting grounds, particularly lands suitable for waterfowl hunting; all such lands to be paid for from the game protection fund;

To receive by gift or bequest, in the name and on behalf of the state of New Mexico, lands suitable for game refuges, hunting grounds, fish hatcheries, or for any other purpose necessary to carrying out the provisions of this act;"

It is to be noted none of the aforequoted purposes speak of nor otherwise manifest a contemplation of using game department funds for advertising purposes.

Also, it might be pointed out that Sec. 53-1-1, N.M.S.A., 1953 Comp., as a declaration of policy provides that:

"It is the purpose of this act and the policy of the state of New Mexico to provide an adequate and flexible system for the protection of the game and fish of New Mexico and for their use and development for public recreation and food supply, and to provide for their propagation, planting, protection, regulation and conservation to the extent necessary to provide and maintain an adequate supply of game and fish within the state of New Mexico."

From this last referred to provision, it may be concluded that primary function of the State Game Commission and the Department of Game and Fish created thereunder is that aiding the propagation and protection of game and fish and to establish conservation regulations as are found necessary for maintaining adequate supplies of such game and fish. The advertising of New Mexico's game and fish resources may well be provided for in authority granted other state agencies specifically created for this purpose.

Accordingly, it is our opinion that game and fish department funds may not be spent as above suggested.