

Opinion No. 58-22

January 30, 1958

BY: OPINION OF FRED M. STANDLEY, Attorney General Alfred P. Whittaker,
Assistant Attorney General

TO: State Board of Finance, State Capitol, Santa Fe, New Mexico

QUESTION

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May a state educational institution, with the approval of the State Board of Finance, spend money for the construction of a dormitory, in excess of the amount budgeted therefor, sufficient funds being available to the institution within the amount appropriated?

CONCLUSION

Yes.

OPINION

ANALYSIS

We understand that your inquiry arises out of the following situation. The New Mexico School for the Visually Handicapped has requested approval by the State Board of Finance for its proposal to construct a new dormitory for senior boys. Estimated cost of the project is \$ 184,858.31, including the architect's 6% fee. The Board of Finance has approved preliminary plans but has stipulated that the architect's fee be extracted from the estimate and based upon the estimated cost as so revised or actual construction cost, whichever is lower. We are advised that the budget for the school as presented to the Legislature included a line item of \$ 160,000.00 intended for the construction of such dormitory. However, we are further advised that sufficient funds are available in other accounts to supplement this amount should the actual cost exceed the amount originally budgeted.

We also understand that the amount involved in no way affects the general fund appropriations for the school, and that the school plans to finance the new dormitory construction by a bond issue against its Land Fund and Permanent Fund income.

Under the facts stated, the Board desires to know whether the \$ 160,000.00 authorized in the budget may be exceeded in the absence of a finding that an emergency exists.

It is our conclusion that the total amount budgeted for this purpose may be revised and increased, so long as the amount of the appropriation made to the school is not exceeded. As you know, under Article IV, § 30 of the New Mexico Constitution, money may be paid out of the State's Treasury only upon an appropriation made by the Legislature which specifies the sum appropriated and the object to which it is to be applied. The appropriation for the School for the Visually Handicapped is found in § 2 of Chapter 235, Laws of 1957, which provides for the appropriation of a fixed dollar amount for each of the 46th and 47th fiscal years to the school. The same section further states:

"Provided, that in addition to the appropriations from the state general fund herein specified, the institutional receipts, grants and unencumbered incomes from lands and permanent funds are hereby appropriated, subject to annual budgets submitted for the approval of the department of finance and administration."

Since the inquiry assumes the availability of funds from the institution's receipts and land grant funds, it is perfectly clear that there is no question of exceeding the appropriation for the school by means of the proposed expenditure. In view of this, the question becomes one of the propriety of the proposed budgetary revision within the amount and for the purpose for which the appropriation is made.

We find no statutory provision which would prohibit the budget revision which would be required to permit the use of appropriated funds in excess of \$ 160,000.00 for the construction of the proposed dormitory. Although the State Board of Finance has found that the proposal does not present an emergency situation, the only statutory provision governing budget revisions and increases which might arguably apply here, and which is keyed to the existence of an emergency is that found in Chapter 250, Laws of 1957, § 2, subsections G' and H. (Other such provisions keyed to a finding of emergency, like that found in Chapter 235, Laws of 1957, § 9 C, clearly do not apply to the facts here presented.) Chapter 250, however, relates to and defines and powers of the "local government division" of the Department of Finance and Administration. In our opinion, the School for the Visually Handicapped at Alamogordo is not a "local public body" as defined in that statute. To the contrary, by the explicit provision of Article XII, § 11 of the Constitution of New Mexico, the school is confirmed as one of the " **state** educational institutions".

Section 12 of Chapter 235, Laws of 1957, expressly provides that upon written request by a state institution operating on a budget, the Governor and Budget Division may make revisions and such changes as are requested. This proviso qualifies the affirmative statement that such a budget, when approved by the Governor, shall be final and binding in determining the expenditures for such fiscal year. We recognize, of course, that all items of capital outlay for this institution can be expended only by approval of the Department of Finance and Administration upon direct application to that department by the institution "for recommendation of purchase through the state purchasing agent."

Based on the foregoing, it is our view that there is nothing found in the 1957 statutory provisions for budgetary control which would in any way inhibit the proposed transaction, so long as the funds proposed to be used are included within the appropriation specified in § 2, Chapter 235, Laws of 1957.