

Opinion No. 58-58

March 18, 1958

BY: OPINION OF FRED M. STANDLEY, Attorney General

TO: Mr. Edward M. Hartman, Director, Department of Finance and Administration,
Santa Fe, New Mexico

QUESTION

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May the Department of Finance and Administration refuse to draw a salary warrant upon the State Treasurer which contains a salary increase when the "salary line item" of the particular division of the State Highway Department's budget will be exceeded for the period contemplated?

CONCLUSION

We do not understand what you mean by "salary line item". However, see opinion for our construction of your power.

OPINION

ANALYSIS

The Department of Finance and Administration was set up under Chapter 251, Laws of 1957, and gives you, among other things, the power to prepare "line item budgets" within the funds appropriated to each department. Chapter 235, Laws 1957, is a combination of appropriations and budgets bill and provides, among other things, and specifically for the Highway Department, the following:

New Mexico State Highway Commission: "Forty-Sixth Fiscal Year -- Forty-Seventh Fiscal Year"

1. Salaries \$ 7,500,000 - \$ 7,800,000
2. Travel and automotive \$ 3,389,509 - \$ 3,522,500
3. Repairs and maintenance \$ 40,000 - \$ 40,000
4. Supplies and materials \$ 3,015,000 - \$ 3,085,000
5. Printing and reproduction \$ 7,500 - \$ 8,500

6. Other operating expense \$ 1,480,000 - \$ 1,550,500

7. Capital outlay \$ 605,000 - \$ 598,000

8. Automobiles and trucks \$ 100,000 - \$ 110,000

9. Other \$ 45,520,000 - \$ 45,225,000

Total \$ 61,657,009 - \$ 61,939,500

Provided, that detailed budgets shall be submitted annually for the approval of the department of finance and administration."

There is also contained in Chapter 235 an additional appropriation in Sec. 16 which provides as follows:

"There shall be appropriated from the state road fund such amounts as may be necessary for the operation of the state highway department as determined by annual budgets submitted to and approved by the department of finance and administration; provided that the department of finance and administration may approve budgets to the extent of available funds if such additional amounts are needed to insure full participation in federal matching moneys."

Section 15 of Chapter 235 provides as follows:

"The department of finance and administration with the approval of the state board of finance is hereby authorized to reduce all annual operating **budgets made herein** not to exceed fifteen percent, except interest and principal payments on debts and salaries of elected state officials." (Emphasis ours).

Now the question arises whether the budgets submitted by the various departments or the budget contained in the appropriation bill itself is the language which Section 15 refers to. We believe that it is elementary that a reading of the words "budget made herein" can only mean the numbered items set out in the appropriations bill and specifically the items numbered 1 through 9 in the New Mexico State Highway Commission budget set out above.

There has long been a confusion in language used by the New Mexico State Legislature between the word "budget" and the word "appropriation". We believe that a careful reading of Chapter 235 together with Chapter 251 can only mean that the skeleton budget approved by the State Legislature were the items set out 1 through 9 and that the appropriation is contained in the word "total" at the bottom of the numbered items. To hold otherwise would be to hold that no power existed to increase any of the numbered items, as any holding that each of the numbered items was an appropriation in itself would violate Article IV, Sec. 30 of the New Mexico Constitution. Any reduction, as authorized in Chapter 235, Sec. 15, set out above, would require, by the language of

that section, application against an item within the approved budget of the New Mexico Legislature. Hence, as an example in the New Mexico State Highway Commission budget and appropriation, as set out above, you have the power to reduce the salary item \$ 1,075,000; the travel and automotive \$ 507,325.45; repairs and maintenance \$ 6,000.00, etc. This would have the effect of reducing the appropriation of \$ 61,939,500 for the 47th fiscal year \$ 9,290,925.00. However, a reduction of that appropriation in actual figures would be, in our opinion, an unlawful delegation of legislative authority to the Executive Department. **State ex rel. Chapman v. Truder**, 35 N.M. 49, 289 P. 594; **Gamble v. Velarde**, 36 N.M. 262, 13 P. 2d 559. So, the reduction in the itemized budgets set out in that chapter would have the effect of prohibiting the expenditure of \$ 9,290,925.00, but it would not reduce the appropriation at all and the amount, or any portion thereof could be reinstated without interfering with the appropriated amount. Further, you will note that Sec. 8 of the Appropriations Act permits a transfer from one of these numbered items to another. Any holding that these items set out in Chapter 235 are appropriations would nullify that section as it would be an increase of an actual appropriation in violation of Article IV, Sec. 30.

This office is required, as are the courts, to construe all enactments of the Legislature constitutional if such a construction is possible. **State ex rel. Sedillo v. Sargent**, 24 N.M. 333, 171 P. 790; **Asplund v. Alarid**, 29 N.M. 129, 219 P. 786. This is the only construction that we believe can be made of Chapter 235 which would make that chapter constitutional. Therefore, in summary, the power to reduce permitted to you in Sec. 15 of Chapter 235 applies to the numbered items contained in Chapter 235 only and any budget that you, or any department, submit must be in compliance with your action regarding the reduced amounts on each of those items set out in the General Appropriations Act.