

Opinion No. 58-82

April 11, 1958

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

TO: Honorable W. T. Scoggin, District Judge, Third Judicial District, Div. I, Las Cruces, New Mexico

QUESTION

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"Do I have to obtain permission from the Governor to use court funds donated from a private source to the juvenile court fund, to be used for juvenile court purposes and that has been kept separate within the court fund, in order to attend a convention out of the state? I have \$ 1,500.00 that was donated by a private individual which was donated to be used any way I saw fit for juvenile court purposes under my program. This was put in the court fund, but there has been nothing drawn against it up to date and it has been kept as a separate item."

CONCLUSION

Yes.

OPINION

ANALYSIS

It is assumed that the convention you plan to attend is concerned with the administration of justice.

In Opinion of the Attorney General No. 57-64, rendered April 1, 1957 and directed to you, we held that a Juvenile Judge may attend an out of state conference concerned with law enforcement problems; that the expenses thereof could be financed out of the court fund; but that the out of state travel allowance would have to be approved by the Governor.

Here, in addition to the foregoing, two added factors are presented. One is that the \$ 1,500.00 item while a part of the court fund, was a donation to be used by you as you saw fit, for juvenile purposes. The second factor is that the \$ 1,500.00 has been kept as a separate item.

In our opinion, we do not believe the two additional factors call for a departure from our former opinion.

Much assistance is gained from **New Mexico State Board of Public Accountancy v. Grant**, 61 N.M. 287, 299 P. 2d 464. In the case, certain voluntary contributions were made to the Board, were deposited in the state treasury, and became commingled with other funds to the Board's credit. It was contended by the Board that these contributions (or an equivalent amount), credited to the Board, could not be transferred to the general fund at the end of the fiscal year. The 1953 General Appropriations Act provided to the contrary. It was held that once deposited and commingled, the donations became as other public funds, and could only be withdrawn through appropriations made by the Legislature upon warrants drawn by the proper officer.

We believe the rationale of this case to be that once donations have become public funds, they no longer have a status entitling them to different treatment. Applying that to the instant issue and knowing of no provision of law to the contrary, we must hold that the \$ 1,500.00 item constitutes public funds (in this case a portion of the court fund). Hence, out of state travel, financed therefrom, must be subject to the Governor's approval. See Sec. 11-1-9, N.M.S.A., 1953 Comp., and Laws of 1957, Ch. 235, Sec. 9B.

Does the maintenance of the \$ 1,500.00 item as a **separate** item serve to distinguish this situation from the cited case? We do not think so. True, commingling had there occurred, but a reading of the language of the opinion convinces us that once the donation becomes public money, and in the absence of a statute providing otherwise, no different treatment is to be accorded the donated funds, irrespective of how they may have been carried for book-keeping purposes.

It goes without saying that nothing herein said is to be taken as authorizing any budgetary allowances to be exceeded.