

## **Opinion No. 58-85**

April 24, 1958

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

**TO:** Mr. Ernest W. Bain, Chief, Local Government Division Department of Finance and  
Administration, Santa Fe, New Mexico

### **QUESTION**

#### **QUESTIONS**

1. Can the Department of Finance and Administration, under the provisions of Chapter 250, Laws of 1957, which imposes upon this Department and the Attorney General the right to authorize increases in budgets by local governments, allow a revision of the budget heretofore approved for the court fund of a particular judicial district, and allow the distribution of the moneys appropriated under the provisions of Section 4, Chapter 116, Laws of 1953, in order to enable the judge of said district to appoint a probation officer and pay his salary therefrom in view of the fact that no such budget item was provided in the budget as approved for said judicial district for the fiscal year 1957-1958?

2. Inasmuch as the State Tax Commission no longer handles local government budgets and the functions relating hereto have been transferred to the Department of Finance and Administration, does the State Tax Commission still have to certify as to the budget provided, as required under Section 5, Chapter 116, Laws of 1953; or does the Department of Finance and Administration certify as to the budgets, since all budgetary functions have heretofore been transferred to this Department under the provisions of Section 10, Chapter 250, Laws of 1957?

#### **CONCLUSIONS**

1. Yes.
2. Department of Finance and Administration.

### **OPINION**

#### **ANALYSIS**

Your question relates to the propriety of permitting an increase in the court fund of the district court for the county under the circumstances set forth in your inquiry. As we understand it, the district judge of the district concerned, in presenting an estimate of the revenue requirements for this fiscal year, included no estimate for the expense of a

probation officer's salary and the court fund budget as finally approved therefore made no provision for such item. The Judge of this district has now indicated his desire to appoint a probation officer. In view of the lack of a budget item in the court fund for the salary and expenses of a probation officer, your Department has been requested to make available for the remainder of the fiscal year ending June 30, 1958, moneys appropriated as set forth in § 4 of Chapter 116, Laws of 1953 (§ 13-8-14, N.M.S.A., 1953). You ask whether the budget may now be revised pursuant to Chapter 250, Laws of 1957 and a distribution made of moneys appropriated under the 1953 law.

It is our conclusion that such revision of the court fund budget pursuant to Chapter 250, Laws of 1957 is proper. As you know, § 16-3-22, providing for the court fund, provides that the district judge shall make an estimate of revenue required for the ensuing fiscal year for court purposes in each county of his district, including salaries and expenses, and shall certify the same to the State Tax Commission. The section further provides that the Tax Commission shall determine the amount of revenue required and certify same to the Board of County Commissioners, and such estimate so certified may not be changed except on order of the Tax Commission. The county commissioners then have the duty to levy a tax not to exceed one (1) mill upon each dollar of assessed valuation to provide the revenues needed for court fund purposes.

Chapter 116, Laws of 1953, relating to the establishment of probation offices and the duties and compensation of such officers, provides in § 3 that the salaries and office expenses of the probation officers and assistants shall be fixed by the appointing judge and paid from the court funds of each county in the judicial district (§ 13-8-13, N.M.S.A., 1953). This statute recites the alarming rate of increase in juvenile delinquency and the corresponding increase of the burden on the courts, requiring a well-trained probation staff, and recites the existence of several judicial districts in the state having limited funds for probation office purposes and other districts completely without funds for these purposes. The legislature then states explicitly the purpose of the Act as follows:

"It is therefore, the purpose of this Act to provide additional funds to augment those now appropriated in certain judicial districts and to provide a means of obtaining funds for those districts where funds are not available."

The 1953 law authorizes the establishment of a probation office by the district judge in each judicial district, and in § 2 (§ 13-8-12) places the appointment and supervision of probation personnel in the hands of the district court.

Chapter 116 of the Laws of 1953, in § 4, establishes an appropriation out of unappropriated funds in the hands of the State Treasurer, to the extent necessary to contribute to the costs of operating and maintaining the probation offices established pursuant to the Act (§ 13-8-14); and then provides (§ 13-8-15):

"The moneys herein appropriated, or so much thereof as may be required, shall be distributed by the state treasurer to the court fund of each district of this state upon certification of the state tax commission that a budget in not less than said amount for

each district has been provided, and that the court fund does not have available funds sufficient to meet said budget and further that additional amounts cannot be provided for said court fund. The amount to be distributed shall not exceed the difference between the amount available in the court fund and the amount budgeted, but in no event shall the amount distributed exceed the sums set forth in section 4 (13-8-14) herein for each district. Said moneys budgeted by each district shall be for probation office purposes only. Moneys appropriated and disbursed by the State treasurer in connection with this act (13-8-11 to 13-8-15) shall be covered into the court fund and disbursed on order of the district judge and in the same manner as other moneys in said fund."

For these funds to be made available to the district court fund in question, then, there must be a certification as to the provision of a budget item in the amount requested, and a certification that the court fund does not have available funds to meet that budget, and cannot provide such funds.

In our opinion, Chapter 250, Laws of 1957, relating to the finances of local public bodies, applies to the court fund of the county so that an increase in the court fund budget may be authorized by your Department and this office as provided in § 2 (H) thereof. That provision permits budget increases to cover the cost of the new activity not contemplated when the final budget was approved, if such activities will produce sufficient revenue to cover such budget increase, or the local public body has surplus funds on hand. This provision, however, must be read together with the provisions of Chapter 116, Laws of 1953, which are not thereby superseded. The dominant purpose of the 1953 law is to provide for the distribution of state moneys to district court funds to defray the expenses of the probation office, in the event that a budget for probation services has been provided and the court fund does not and cannot meet such budget.

In our view, the instant case clearly comes within the letter of the law and the intention of the legislature in enacting Chapter 116, Laws of 1953. It follows that the court fund budget in question may be revised and increased to provide for probation office services. Moneys may be made available as provided in §§ 13-8-14 and 13-8-15.

You inquire further whether a certification of the budget provided under § 13-8-15 is to be made by the State Tax Commission as provided by Chapter 116, Laws of 1953, § 5, or whether this duty is now to be discharged by your department.

This question is not without difficulty. As you know, Chapter 250 of the Laws of 1957 is one of several statutes comprising package legislation creating the Department of Finance and Administration and enumerating its powers and duties generally. Chapter 250 is concerned with the supervision of the finances of local public bodies. After setting forth the general powers and duties of the local government division of your department, the statute specifically undertakes to amend two particular statutory sections which deal with the levy of taxes. It repeals various statutory sections therein enumerated. Finally, it provides as follows in Section 10:

"All the powers of and functions of the state tax commission relating to budgets of local public bodies, when not inconsistent with the provisions of this act, are transferred to and imposed upon the local government division of the department of finance and administration."

Your real inquiry thus is whether the quoted provision has the effect of amending § 13-8-15 although no specific reference to that section is made and that section is not set forth as amended.

There is no doubt about the intention of the legislature. Clearly the legislature intended to create a new procedure for the supervision of the financial affairs of the local public bodies, and to invest in the local government division of the new Department of Finance and Administration the powers of the State Tax Commission relating to the budgets of local public bodies.

Your question poses difficulty not as a problem of statutory construction but as a problem of constitutional law, in view of the provision of Article IV, § 18 of the New Mexico Constitution, which provides as follows:

"No law shall be revised or amended, or the provisions thereof extended by reference to its title only; but each section thereof as revised, amended or extended shall be set out in full."

The effect of this provision has been considered by the Supreme Court of New Mexico in a number of cases, none of which, however, touch the exact question posed by your inquiry. The purpose of the provision, of course, is to eradicate the evil of so-called "blind legislation", that is, legislation which undertakes to revise, amend or extend existing legislation in such manner that the effect of the new statute cannot be determined without resorting to the previous legislation as well. See **State v. Armstrong**, 31 N.M. 20 (1924); 82 C.J.S. Statutes, § 260. In the **Armstrong** case, our Supreme Court recognized and approved what it referred to as the "Arkansas Rule", which permits reference to existing law for methods of procedure to be applied under a new statute, but does not permit such reference where it would confer or take away positive and substantial rights. The court there also recognized the so-called "Kentucky Rule" which permits reference to existing law for a statement of the conditions under which a new right expressly granted by the new legislation can be effectuated.

After a careful review of all of the New Mexico cases dealing with the constitutional provision above quoted, it is our conclusion that Chapter 250 of the Laws of 1957 effectively transfers the powers of the State Tax Commission relating to the budgets of local public bodies to your department and does not thereby violate Article IV, § 18 of the Constitution of New Mexico. It has been said many times that constitutional provisions such as that cited must receive a reasonable and liberal construction to uphold the acts of the legislature to the extent that this can be done. In our view, Chapter 250 of the Laws of 1957 clearly is an independent statute, the meaning of which is reasonably clear from an examination of this statute itself. We find no

uncertainty or confusion as to the effect of this law upon pre-existing enactments. It does not come within the "blind legislation" prohibited by the constitutional provision. In support of this conclusion, see also **People v. Stimer**, 226 N. W. 899 (Mich. 1929), 67 A.L.R. 552 and following annotation; and **State v. Rasmussen**, 128 P. 2d 318 (Wash. 1942). In each case, a statute transferring duties from one agency to another was attacked on the basis of constitutional provision somewhat similar to Article IV § 18 of the New Mexico Constitution and was upheld by the court.