

## Opinion No. 59-111

August 17, 1959

**BY:** HILTON A. DICKSON, JR., Attorney General

**TO:** Mr. Alex J. Armijo Chief, Budget Division Santa Fe, New Mexico

{\*173} This is in reply to your request for an opinion on the following:

1. Does Chapter 128, Laws of 1959, authorize you to grant the Superintendent of Insurance an additional general fund appropriation in the amount of the cost of printing copies of the insurance laws, of rules and regulations and of any other publication which the superintendent determines to be of sufficient interest to warrant publication thereof?

No, but it is my opinion that the Superintendent of Insurance may properly expend money from the "Insurance Fund" and from the "Fire Protection Fund" for the purposes of publication of documents which fall within either the scope of Chapter 128, Laws of 1959, or Chapter 297, Laws of 1959, and the nature of the publications will determine from which fund the expenses of such publications will be taken.

{\*174} I invite your attention to Section 58-2-4, N.M.S.A., 1953 Compilation which provides the manner in which the expenses of the insurance department shall be paid and the specific fund out of which such payment shall be made. This section reads in part as follows:

". . . The state auditor, upon vouchers approved by the chairman of the corporation commission shall issue warrants on the state treasurer for the **payment of expenses, including salaries, for the operation of the insurance department, to be paid out of the fund known as the "Insurance Fund" hereinafter in this act established. The treasurer of the state of New Mexico shall from time to time transfer from the "insurance fund" to the general fund of the state such part thereof as shall be in excess of that required for the expenses of the insurance department.**" (Emphasis supplied).

Your attention is next directed to Section 58-5-2.4, N.M.S.A., 1953 Compilation, p.s., which earmarks the insurance department collections into two funds. This section reads:

**"All monies received for fees, licenses and taxes from fire and vehicle insurance business described as classes three (3) and five (5) of schedule two (2) of section 58-18-24 New Mexico Statutes Annotated, 1953 Compilation (being Laws 1955, chapter 221, section 24), shall be paid daily to the state treasurer and by him credited for the "fire protection fund"; all moneys received for fees, licenses and taxes from all other insurance classes described in said schedule two (2) of Section 58-18-24 New Mexico Statutes Annotated, 1953 Compilation (being Laws 1955, chapter 221,**

Section 24), **shall be paid daily to the state treasurer and by him credited to the "insurance fund."** (Emphasis Supplied).

It can readily be seen from the above quoted sections of the statutes that all fees, licenses and taxes from all classes of insurance business contained in schedule two (2) of Section 58-18-24, N.M.S.A., 1953 Compilation, p.s., are to be earmarked into two funds by the state treasurer. This money may be later transferred into the general fund only pursuant to the authority contained in Section 58-2-4, N.M.S.A., 1953 Compilation, which provides that after the expenses of operation of the insurance department, including salaries, have been paid the excess may be transferred to the general fund; and pursuant to Section 58-5-2.17, N.M.S.A., 1953 Compilation, p.s., which provides for a transfer of the excess of the earmarked fire protection funds over and above the amount distributed under the act plus \$ 200,000.00.

Chapter 128, Laws of 1959, now codified as Sections 58-2-11 and 58-2-12, N.M.S.A., 1953 Compilation, p.s., expressly authorizes the Superintendent of Insurance to publish pamphlets and other materials according to his own determination. The proceeds from the sale authorized under the above sections, **are also earmarked for the insurance fund.**

The publication of the various pamphlets and other materials by the Superintendent of Insurance is a proper expense for his department and the cost of such publication therefore would properly be paid out of the insurance fund.

Also, under the Fire Protection Fund Act of 1959, codified in Section 58-5-2.3 to Section 58-5-2.18, N.M.S.A., 1953 Compilation, p.s., the insurance superintendent is authorized to promulgate, file and publish rules and regulations, including, but not limited to those set out in Section 58-5-2.14, and the costs of publication could properly be taken out of the earmarked fire protection funds.

Since ample earmarked funds are provided for the operation of the insurance department and since {\*175} the primary purpose of all fees, licenses and taxes collected by that department is to operate the department, it is my opinion that Chapter 128, Laws of 1959, does not operate as a general appropriation from the general fund.

By: B. J. Baggett

Assistant Attorney General