

Opinion No. 59-114

August 19, 1959

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

TO: Don L. Coppock, Director Fair Employment Practice Commission P. O. Box 1726
Santa Fe, New Mexico

{*177} Receipt is acknowledged of your letter of recent date in which you request an opinion on the following questions:

1. If a gift of money is paid into the Fair Employment Practice Commission as provided in sub-paragraph (b) of Section 59-4-9, N.M.S.A., 1953 Compilation, is the money to be expended by the Director of the Fair Employment Practice Commission?
2. If gift money is paid into the Fair Employment Practice Commission as provided by Section 59-4-9, N.M.S.A., 1953 Compilation, is the money to be expended and disbursed by the Budget and Finance Department of the State of New Mexico?

The answer to your question No. 1 is yes.

{*178} The answer to question No. 2 is no.

The pertinent part of Section 59-4-9, N.M.S.A., 1953 Compilation, provides as follows:

"(b) The commission is hereby authorized to accept contributions from any person to assist in the effectuation of this section and may seek and enlist the cooperation of private charitable, religious, labor, civic and benevolent organizations for the purposes of this section.

Section 59-4-9, N.M.S.A., 1953 Compilation, is very clear and specific in its language. The purpose, quite obviously, is to permit the Fair Employment Practice Commission to accept contributions from organizations to assist in the educational program described in subsection (a) of that section.

It is true that under Section 11-2-3, N.M.S.A., 1953 Compilation, all public moneys in the custody or under the control of any state official or agency obtained or received by any such official or agency from any source, except as in Section 23 (11-2-54) provided, shall be paid into the state treasury. Then the Legislature in 1959 added Section 11-2-3.1, N.M.S.A., 1953 Compilation (P.S.), which provides as follows:

"General fund created. -- There is created a fund to be known as the 'general fund' to which the state treasurer shall credit all revenues not otherwise allocated by law. Expenditures from this fund shall be made only in accordance with appropriations authorized by the legislature."

In the case of **State ex rel. Thompson, State Treasurer, v. Board of Regents for Northeast Missouri State Teachers' College**, 305 Mo. 57, 264 S.W. 698, which was an original proceeding by the State to compel the Board of Regents of the Northeast State Teachers' College to pay certain money into the State Treasury, the Supreme Court of Missouri said in denying the writ:

"By 'revenue' of the state, required by Const. Art. 4, § 43, to be paid into the state treasury, is meant the current income, from whatever source derived, which is subject to appropriation for public uses, or money which the state in its sovereign capacity is authorized to receive; the source of its authority being the state Legislature."

And the Court further held that although the Constitution of Missouri required moneys received by the State to go into the State Treasury and that they must be deposited to the credit of the funds to which they respectively belong, money received by the regents of a teachers' college as payment under an insurance policy for loss by fire is not required to be paid into the State Treasury. The facts in this case are similar to the facts propounded by you in your second question and, in our opinion, support the conclusion that such contributions are not revenue or public money which must be credited to the general fund.

To require the credit of the contributions to the general fund would serve to defeat the purpose and intent of the Legislature in enacting the afore-mentioned Section 59-4-9. It is not reasonable to assume that any contributions would be forthcoming for the desired educational purposes if such funds were required to be deposited and appropriated in the usual manner required for public revenues. The person who contributes could not be certain that his contribution would ever be designated and used for the purposes he intended.

In view of the obvious intent of Section 59-4-9, N.M.S.A., 1953 Compilation, and the definitions and authorities cited, the answer to your first question must be answered in the affirmative. Insofar as the contributed funds are concerned, {**179*} they do not have to be disbursed by the Budget and Finance Department of the State but may be disbursed by the Fair Employment Practice Commission.

Your second question is answered in the negative since said contributions are not revenues and thus do not fall within the purview of Section 11-2-3, N.M.S.A., 1953 Compilation, as amended, requiring public funds to be credited to the general fund.

By Hilario Rubio

Assistant Attorney General