

Opinion No. 59-186

November 12, 1959

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

TO: Oliver E. Payne Attorney, Oil Conservation Commission Santa Fe, New Mexico

QUESTION

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Is there a method by which the Oil Conservation Commission, when it rents its department aircraft to other state agencies, can retain the rental payments, when made, in a fund to be used by the Oil Conservation Commission to defray the expense of continued operation of the aircraft?

CONCLUSION

Yes.

OPINION

{*288} **ANALYSIS**

Section 65-3-5, N.M.S.A. 1953 Compilation provides in part as follows:

"It [the Oil Conservation Commission] shall have jurisdiction and control of and over all persons and things necessary or proper to enforce effectively the provisions of this act or of any other law of this state relating to the conservation of oil and gas."

{*289} The power and authority of the commission is general in nature but the commission is restricted to the end that it cannot act arbitrarily, unlawfully or capriciously in carrying out the administrative functions imposed upon it.

The commission may also be restricted by statute. However, no statutory prohibition can be found dealing with the authority of the commission to set up certain accounting procedures in the administration of its own internal affairs.

The objection to the method of recrediting the rental payments to the several line expense items such as oil and gas, repairs and pilot time, which are set out in your budget is that, from an accounting standpoint, the results will indicate that you have expended more from these line expense items than was set out in your budget. It is true that from a practical standpoint, the commission itself will not have expended this money, but it will give a false picture of your expenditures at the close of the fiscal year.

A working capital fund may be set up in your department for the purpose of defraying the operating expenses of the aircraft. All rental money obtained from the use by other agencies of this plane would be deposited to the account of this working capital fund with the state treasurer. Payments could then be legally made out of this fund for the operating costs of the aircraft.

Chapter 288, Laws of 1959, Section 7, provides that no agency may expend monies in excess of that amount budgeted under the appropriations made. It should be noted therefore that the establishment of a working capital fund for your aircraft is the only means by which your "share-the-plane" policy can be carried out without violating, at least from an accounting standpoint, the prohibition of this section.

We do not feel that the charges for the use of the aircraft can be unreasonable or of such a nature as to result in a profit on its operation, but should be computed on the basis of actual operating expenses, maintenance and repair, and recognized depreciation schedule.

By: B. J. Baggett

Assistant Attorney General