

## **Opinion No. 60-158**

September 1, 1960

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

**TO:** Mr. Earl Davidson Chief, Budget Division Department of Finance and Administration Santa Fe, New Mexico

### **QUESTION**

#### **QUESTIONS**

Do appropriations for the 48th Fiscal Year under Chapter 288, Laws of 1959 remaining to the credit of the following agencies revert to the General Fund as of the close of business, June 30, 1960?

1. District Attorneys.
2. District Judges -- Line Item 2 -- Retirement and Social Security.
3. State Engineer -- Hydrographich Survey.
4. Board of Barber Examiners.
5. Collection Agency Board (State Bank Examiner.)

#### **CONCLUSIONS**

1. Yes, insofar as the same comes from the General Fund.
2. Yes, insofar as the same comes from the General Fund.
3. No.
4. No, may be transferred at the end of the licensing year, August 1, 1960.
5. Yes, for the license year ends June 30, 1960.

### **OPINION**

#### **{\*546} ANALYSIS**

In considering the foregoing questions and whether the unexpended balances of the 48th Fiscal Year appropriation remaining on June 30, 1960 revert to the General Fund certain commentaries of our Supreme Court, when considering past Appropriations Acts

are pertinent. Particularly we should consider the analysis of the Court in making statements such as the following:

"When an appropriation is made, why should not there be included with such appropriation matter germane thereto and directly connected with it, such as provisions for the expenditure and accounting for the money, and the means and methods of raising it, whether it be by taxation, or by some other method? What valid objection can be interposed to such a course so long as the Legislature confines {*\*547*} the identical provisions to the main fact of the appropriation, and does not attempt to incorporate in such act general legislation, not necessarily or directly connected with the appropriation legally made, under the restrictions of the section in question?" *State ex rel Lucero v. Marron*, 17 N.M. 304, 316.

Our Court has held without exception that the Legislature in making appropriations in General Appropriations Acts can work with a great deal of flexibility so long as the language included therein bears a direct relationship to the appropriation made and does not incorporate general legislation not necessarily or directly connected with the appropriation made. See **State v. Board of Finance**, 59 N.M. 121, 279 P. 2d 241 and **New Mexico State Board of Public Accountancy v. Grant**, 61 N.M. 287, 299 P. 2d 464. Also, we feel it is incumbent upon us to bear in mind Section 21 of Chapter 288, *supra*, which expresses the general intent of the legislature throughout the Appropriations Act, as follows:

". . . any unused balance of general fund appropriations remaining to the credit of any state office or department at the close of a fiscal year shall revert to the state general fund and be used to meet appropriations for the succeeding fiscal year, except as otherwise provided in this act."

With the above considerations in mind, we shall now discuss the specific areas of the Appropriations Act which you have referred to.

First, let us consider Section 1 including the appropriations to the Judiciary and the District Attorneys. The last sentence of the opening paragraph of Section 1 reads as follows:

"Balances remaining to the credit of accounts set out in this section shall revert to the general fund at the end of each fiscal year, except as otherwise indicated."

Thereafter, there is set forth for each district the sums which are authorized for expenditure by each such district. Of the total sums set forth, each district is required to provide a stated amount from the court funds of that district. For example, you will note that appropriations are made available for expenditure by the District Attorney's office in District 1 in the amount of \$ 78,500 for the 48th Fiscal Year. However, of this amount \$ 40,000 is to be contributed by the court funds of the First Judicial District.

There is no indication within the framework of the language employed in defining the appropriations made available to the several district attorneys which would disclose other than an intent that any unexpended balance should revert to the General Fund. However, in view of the provisions of Section 16-3-22, et seq., N.M.S.A., 1953 Compilation, it is our conclusion that that portion accruing to the several offices from the court funds may not revert. It is our further conclusion that since the funds are commingled in administration and there is no statutory provision showing which amount is to be first exhausted through expenditure, the unexpended balance remaining at the close of the fiscal year must be treated on a pro rata basis and only the proportionate share appropriated from the general fund remaining unexpended will revert to the General Fund.

Second, we shall consider Line Item No. 2 -- "Retirement and Social Security" under the general heading "District Judges" within Section 1. The language of the first paragraph of Section 1 previously set forth, again becomes applicable in arriving at our conclusion. We assume that this is the state's contribution to the Retirement and Social Security Fund and that the same comes from the general fund, since there is no indication {\*548} that the appropriation is to come from the Court Fund. Therefore, any amount within this line item which remains unexpended at the close of the 48th Fiscal Year should revert to the General Fund.

The third item to be considered is that amount appropriated to the State Engineer for Hydrographic Survey purposes. The opening paragraph of Section 2 also provides that balances remaining to the credit of accounts set out in this section at the end of each fiscal year shall revert to the General Fund "except as otherwise indicated." This closing phrase of this sentence becomes material when considering whether the unexpended balance of the above fund reverts. The use of the fund is governed by Section 75-4-10, N.M.S.A., 1953 Compilation. In analyzing that section and Section 75-4-9 which governs the levying of taxes for the benefit of the fund, it becomes apparent that the Survey Fund is a revolving fund to be made available to the State Engineer for purposes of carrying out the duties placed upon him under Article IV, Chapter 75, in relation to Hydrographic Surveys. It is our opinion that since this is a revolving fund, the Legislature intended that the \$ 70,000 appropriated to it by Chapter 288, Laws of 1959, should remain untouched and continue to be available for the work of the State Engineer in this connection. The same conclusion, of course, is true of any amounts received by him through assessments made by the courts of costs incurred through litigation and which involve such surveys. Therefore, we conclude that the unexpended balance of this sum falls within the purview of the language "except as otherwise indicated" and that it does not revert.

Next, we have for consideration the appropriations made to the Board of Barber Examiners falling within Section 8 of the Appropriations Act. Section 8 provides in the opening paragraphs that cash balances remaining to the credit of any of the following boards (with certain exceptions not herein pertinent) shall be transferred to the State General Fund by the order of the Department of Finance and Administration at the end of the licensing year. Some doubts are created as to the transfer of such unexpended

funds remaining to the credit of the Board of Barber Examiners because of the provisions of Section 67-14-21. This section provides for the "State Board of Barber Examiners' Fund" with any unexpended balance at the close of each fiscal year in excess of \$ 500.00 being set aside and placed to the credit of the Free Textbook Fund. Our Supreme Court has had occasion to consider this section in the case entitled **State v. State Board of Finance**, 59, N.M. 121. The court therein held that the provisions of said section were not a limitation upon the Legislature in making other provision for the funds of said board by subsequent appropriations act. In view of the holding of the Court in that case, it is our opinion that because of the provisions of Section 8 of Chapter 288, the cash balances remaining to the credit of the Board of Barber Examiners at the close of the licensing year may be transferred to the General Fund by appropriate order of the Department of Finance and Administration. There remains the question of determining the end of the licensing year. In this connection your attention is invited to Section 67-14-13, N.M.S.A., 1953 Compilation. This section provides as follows:

"Every certificate of registration, establishment license, or permit which has not been renewed as herein required in any year, shall expire on the 1st day of August in that year."

In view of the language of this section it is our conclusion that the licensing year ends on August 1, 1960 and that the unexpired balances remaining on that date may be transferred by appropriate order of your department.

{\*549} Lastly, we have for consideration the Collection Agency Board whose appropriations also are made under Section 8 of Chapter 288. It, likewise, appears clear that the cash balances remaining to the credit of this board at the close of its licensing year may be transferred to the State General Fund by appropriate order. The only question remaining for determination is ascertaining the end of the licensing year. In this connection your attention is invited to Section 67-15-61, N.M.S.A., 1953 Compilation (P.S.). The opening sentence therein provides that the license is effectual until the first day of July next ensuing the date thereof, unless sooner revoked or cancelled. In view of the provisions of this section it is our opinion that the end of the licensing year is June 30, 1960 and that any remaining unexpended cash balances made available to this fund for the 48th Fiscal Year shall be transferred by appropriate order of your department.

By: Thomas O. Olson

First Assistant Attorney General