

**Opinion No. 60-216**

December 8, 1960

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

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

**QUESTION**

QUESTION

Does the proviso below the figure appropriation in Chapter 288, Laws 1959, for the State Treasurer's office mean that in addition to the \$ 5,007.00 provided in Item No. 5 the sum of \$ 4,332.00 is appropriated for debt service?

CONCLUSION

No.

**OPINION**

{\*635} **ANALYSIS**

The relevant portion of Chapter 288, Laws 1959, reads as follows:

"\* \* \*

5. Debt service 5,141 5,007

Provided that partially to defray the cost of item (5) for debt service there shall be appropriated from the gasoline tax receipts three thousand dollars (\$ 3,000) annually and from severance tax receipts one thousand four hundred twenty-one dollars (\$ 1,421) for the forty-eighth fiscal year and one thousand three hundred thirty-two (\$ 1,332) for the forty-ninth fiscal year."

Your question is whether the wording of the above proviso appropriates to the State Treasurer the sum of \$ 4,332.00 in addition to the \$ 5,007.00 in line 5 or whether the proviso merely points out the sources from which part of the \$ 5,007.00 is to come. We are of the opinion that the latter proposition is the case. As we view the question, when the legislature used the words ". . . partially to defray the costs of item (5) for debt service . . .", it was merely pointing out that \$ 3,000.00 of the \$ 5,007.00 was to come from gasoline tax receipts and \$ 1,332.00 of the \$ 5,007.00 was to come from severance tax receipts from the 49th fiscal year. The remainder is to come from the General Fund. Section 2, Chapter 288, Laws 1959, provides that all appropriations

made thereunder are from the General Fund except where otherwise expressed. As we {\*636} view the problem, the proviso above set forth merely pointed out the source of the \$ 4,332.00 of the \$ 5,007.00.

It might be noted that the proviso found in the 1957 General Appropriations Act (Chapter 235, Laws 1957) used the words ". . . that in addition to item (8) for debt service . . ." If the legislature intended for the amounts in the proviso in the 1959 Act to be in addition to the amount in line 5, it certainly could have said so in clear and unambiguous terms as it did in the 1957 Act. It having failed to do so, we are of the opinion that the total amount appropriated to the State Treasurer for debt service in the 49th fiscal year is the amount of \$ 5,007.00.

By: Boston E. Witt

Assistant Attorney General