

Opinion No. 61-54

June 28, 1961

BY: OPINION OF EARL E. HARTLEY, Attorney General Oliver E Payne, Assistant Attorney General

TO: Mr. K. D. Spiller, Chief, Budget and Financial Control Division, Department of Finance and Administration, Santa Fe, New Mexico

QUESTION

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1. Is the sum of \$ 40,000 appropriated to the Department of Game and Fish for fire suppression activities in the fiftieth fiscal year to be transferred to the Forest Conservation Commission?

CONCLUSION

1. No.

OPINION

ANALYSIS

The question posed necessitates a study of various enactments by the New Mexico Legislature and the United States Congress, as well as the interrelationship of such enactments.

Section 53-1-8, N.M.S.A., 1953 Compilation, prescribes the general powers and duties of the State Game Commission and provides that moneys paid into the game protective fund shall not be transferred to another fund and that this act is a guaranty to persons who pay for hunting and fishing licenses that the money in the game protective fund shall be used only for the purposes set out in the act.

Chapter 254, Laws 1961 (General Appropriation Act), makes a total appropriation for the Department of Game and Fish. Included therein under item 4 is an annual \$ 40,000 appropriation for fire suppression. This section provides that "item 4 shall be transferred to the forest conservation commission to be used for fire control purposes."

Absent any other considerations and legislative enactments, we would feel constrained to hold that the Legislature used the term transfer in its literal sense. However, the ramifications are such that other legislative pronouncements, both state and federal, must be examined.

Section 1 of the **Pittman-Robertson Act**, as amended (16 U.S.C., § 669 et seq.) provides that in order for a state to be eligible for federal aid funds for wildlife restoration projects it must have passed a law prohibiting the diversion of hunting license fees for any purpose other than administration of the game and fish department. The **Dingell-Johnson Act** (16 U.S.C., § 777 et seq.) includes similar provisions against the diversion of license fees paid by fishermen.

The purpose of these Congressional enactments is to provide Federal funds to the states to be utilized by their fish and game departments in wildlife and fish restoration projects.

The New Mexico Legislature has expressly assented to these Congressional provisions. The State Game Commission has been authorized and **directed** to perform all acts necessary to achieve the fish and wildlife restoration projects as enacted by Congress and to comply with these Acts. Sections 53-1-14 and 53-4-29, N.M.S.A., 1953 Compilation. Our Legislature has also provided that the Federal funds received pursuant to the subject Acts be deposited to the credit of the game protective fund. Sections 53-1-15 and 53-4-30, N.M.S.A., 1953 Compilation.

The 1961 Legislature expressly referred to money received from the Federal Government as provided by the Pittman and Dingell Acts in making the appropriation to the Department of Game and Fish for the fiftieth and fifty-first fiscal years.

The United States Department of the Interior has recognized that there are occasions where the receipts from hunting and fishing licenses may be made available to an agency of the state other than its fish and game department without jeopardizing the state's eligibility to participate in the Federal aid programs for fish and wildlife restoration projects. Such situations arise when the state agency in charge of game and fish matters arranges to have another agency perform services that would otherwise have to be performed by it. In entering into such service contracts the State Game Commission must make sure that the services to be performed have a direct relationship to the functions and duties which it is obliged to perform and, further, that it will receive full value for money paid. When this is the situation, the money is being utilized for the purpose of administration of the Game and Fish Department.

It seems quite clear that adequate protection and conservation of game and fish is dependent to some degree on having funds for fire control activities. Legislative recognition of this fact can be ascertained from the powers and duties of the State Game Commission as set forth in Section 53-1-8, *supra*.

It is our opinion that the 1961 Legislature was aware that the Forest Conservation Commission is better equipped to provide fire control protection than is the Department of Game and Fish, and that the latter was authorized to contract with the former to provide the necessary fire control services to aid in the protection and propagation of game and fish -- up to a maximum of \$ 40,000 worth of such services per year. That such was the intent of the Legislature is indicated by the following provision

incorporated in that portion of the 1961 General Appropriation Act dealing with the Forest Conservation Commission (Section 2, Chapter 254, Laws 1961):

"The Commission may also utilize funds made available for fire protection work by other agencies and departments."

In view of the various enunciations by the New Mexico Legislature that this State wishes to co-operate with the Federal Government in every way in regard to fish and wildlife restoration projects, we cannot attribute to the Legislature an intention which would result in seriously jeopardizing the needed and significant Federal aid funds received by New Mexico for these purposes.

We conclude that the \$ 40,000 annual fire suppression fund appropriated to the Department of Game and Fish is not to actually be transferred to the Forest Conservation Commission. The Department of Game and Fish is simply authorized to contract with the Forest Conservation Commission to perform fire suppression activities reasonably necessary for the protection of game and fish. The formula to be utilized in providing and paying for such services is a contractual matter between these two agencies.