

## Opinion No. 62-65

May 1, 1962

**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, State Capitol Building, Santa Fe, New Mexico

### QUESTION

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Are all balances in the Oil Conservation Commission fund in excess of \$ 100,000.00 revertible to the State general fund at the end of the fiftieth and fifty-first fiscal years?

#### CONCLUSIONS

Yes.

### OPINION

#### ANALYSIS

Section 7, Chapter 254, Laws of 1961, made appropriations for the fiftieth and fifty-first fiscal years to agencies operating with dedicated funds. After making an appropriation to the Oil Conservation Commission for these two fiscal years, the statute went on to provide as follows:

**" Provided that at the close of the forty ninth fiscal year, two hundred thousand dollars (\$ 200,000.00) shall revert to the state general fund; and** provided further that at the close of each succeeding fiscal year all balances in excess of one hundred thousand dollars (\$ 100,000) shall revert to the state general fund." (Emphasis added).

The underlined portion of the above - quoted provision was vetoed by the Chief Executive.

Your question is whether the unvetoed reversion provision is operative at the close of the fiftieth and fifty-first fiscal years.

The controlling consideration in construing a statute is ascertainment of the legislative intent. **Asplund v. Alarid**, 29 N.M. 129, 219 Pac. 786; **Montoya v. McManus**, 68 N.M. 381, 362 P.2d 771. And such legislative intent is determined primarily from the language actually contained in the statute. **De Graftenreid v. Strong**, 28 N.M. 91, 206 Pac. 694.

Since the bill in question as passed by the legislature contained the portion that was subsequently vetoed, it is necessary to consider the vetoed provision in determining the legislative intention relative to the non-vetoed provisions. When this is done, it becomes apparent that the legislature intended to accomplish the following two things: (a) \$ 200,000 to revert at end of forty-ninth fiscal year and (b) all balances in excess of \$ 100,000 to revert at the close of the fiftieth and fifty-first fiscal years. When the two provisions are read together, as they must be, no other conclusion can be reached. The vetoed provision called for a \$ 200,000 reversion at the close of the forty-ninth fiscal year while the non-vetoed provision called for a reversion of all balances in excess of \$ 100,000.00 "at the close of **each succeeding** fiscal year." (Emphasis added). The fiftieth and fifty-first fiscal years are the ones succeeding the forty-ninth fiscal year.

Assuming for the moment that since the Chief Executive acts in a quasi-legislative capacity when exercising his power of partial veto, his intention in regard to the bill as partially vetoed should also be considered, we still arrive at the same conclusion. See **Dickson v. Saiz**, 62 N.M. 227, 308 P. 2d 205. It certainly appears that the Governor intended only to veto the first reversion proviso and leave the second reversion proviso exactly as passed by the legislature.