

Opinion No. 63-166

December 16, 1963

BY: OPINION of EARL E. HARTLEY, Attorney General

TO: Mr. Donald B. Moses President State Bar of New Mexico 610 Simms Building
Albuquerque, New Mexico

QUESTION

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In the case of boards, commissions and agencies to which the legislature did not appropriate or provide moneys for administrative overhead, is five percent of the budget of that board, commission or agency to be paid into the general fund?

CONCLUSION

No.

OPINION

{*388} ANALYSIS

Section 14, Chapter 287, Laws 1963 (General Appropriation Act) provides in pertinent part as follows:

"To the state general fund there are appropriated all amounts **set out in this act for 'administrative overhead'** to defray partially the general overhead cost of government." (Emphasis added).

In the case of a number of agencies an amount was appropriated and set out in the General Appropriation Act for administrative overhead. For example, this was the situation in regard to the Investment Division of the Department of Finance and Administration, the State Fire Marshal, the Department of Courtesy and Information, the Educational Retirement Board, the Oil Conservation Commission, the Public Employees Retirement Board and the Social Security Division of the Public Employees Retirement Board.

In addition, Section 9 of the General Appropriation Act provided that twenty-two specifically enumerated boards would pay five percent into the general fund as administrative overhead.

In view of the language contained in Section 14 of the Act providing an appropriation to the general fund of "all amounts set out in this act for 'administrative overhead'", we

conclude that where no appropriation was made to an agency, board or commission for administrative overhead the provision does not apply. The doctrine that affirmative specification excludes implication is, in our opinion, applicable in this case. **Layne v. Harris**, W. Va., 90 S.E. 2d 270; **Howlett v. Doglio**, Ill., 83 N.E. 2d 708.

By: Oliver E. Payne

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