

Opinion No. 64-52-A

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

TO: Mr. Alex J. Armijo, Secretary, State Board of Finance, Santa Fe, New Mexico

QUESTION

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Under what circumstances should the State Board of Finance authorize payments from the state court fund to counties making application for such funds, and what factors should determine the need for such funds?

CONCLUSION

See Analysis.

OPINION

ANALYSIS

Your question necessitates an examination of a number of statutes some of which were enacted in 1963, others of which were rewritten in that same year.

Perhaps the major change made by the 1963 legislature in connection with the state court fund is the provision contained in § 16-3-25.1, N.M.S.A., 1953 Compilation (P.S.) which reads as follows:

"Each clerk of the district court shall remit all costs collected in criminal cases to the state treasurer for credit to the state court fund."

Prior to 1963 such costs were credited to the court funds of the various counties.

Rewritten in 1963 was Section 16-3-27, N.M.S.A., 1953 Compilation (P.S.) which provides that each district judge of each judicial district shall, on or before May 1st of each year, certify to the State Tax Commission the amount of money required in each county of his district for the trial of cases. If the amount required is in excess of the amount which will be produced by the maximum one-mill levy provided by § 16-3-22, N.M.S.A., 1953 Compilation, the State Tax Commission is to levy a state court fund tax sufficient to produce the amount required. When levied and collected, the proceeds are credited to the state court fund.

Section 16-3-28, N.M.S.A., 1953 Compilation (P.S.) provides as follows:

"A. The state board of finance shall determine the need of any county for funds to be used for the trial of cases and may require submission of evidence it deems necessary. If it determines funds are needed, it shall certify to the department of finance and administration the amount needed.

"B. The director of the department of finance and administration shall issue his warrant upon the state court fund and payable to the county treasurer for credit to the court fund of the county to be used only for the trial of cases in the county.

"C. The clerk of the district court of the county shall render an itemized statement of the disbursement of the money, in any form required by the state board of finance."

A limitation on such payment out of the state court fund is contained in § 16-3-29, N.M.S.A., 1953 Compilation (P.S.) which provides as follows:

"No money shall be paid from the state court fund to any county which has not levied the maximum tax on the property of the county as authorized by law for support of the district court."

You ask under what circumstances the State Board of Finance should authorize payments from the state court fund to counties making application for such funds, and what factors should determine the need for such funds.

Now that court costs in criminal cases are credited to the state court fund rather than the court fund for the particular county, it seems rather apparent that a number of counties are going to be faced with the necessity of asking the State Board of Finance for the financial assistance contemplated by Section 16-3-28, supra.

The criterion to be employed by the State Board of Finance is **projected** need. It must be remembered that we also have a practical problem in view of Section 16-3-27, supra, enacted in 1963. This section provides that "All moneys in excess of twenty-five thousand dollars (\$ 25,000) in the state court fund on June 30th of each fiscal year shall be covered into the general fund."

In the light of this provision, it is our view that § 16-3-28, supra, contemplates that a county which will need money in excess of that provided by the one-mill levy make application to the State Board of Finance in the latter part of the fiscal year for its projected needs for the ensuing fiscal year. If the county must wait until its court fund is exhausted prior to making application, not only will the court have to cease some or all of its functions until the State Board of Finance hears and determines its application, but also it may force the county or counties to make application when the fund is at its lowest level, since all moneys in excess of \$ 25,000 will revert to the general fund on June 30th.

The reversion provision was designed to alleviate tying-up funds which are **not needed** by the courts. It was not designed to increase the general fund at the expense of counties which need the money to properly administer their court systems.

As to the factors which should be considered by the State Board of Finance in making a determination of how much money a county needs from the state court fund for the ensuing fiscal year, we suggest the following:

- (a) the court's proposed budget;
- (b) the court's certification to the State Tax Commission as required by § 16-3-27;
- (c) the amount of money in the court fund of the particular county;
- (d) the amount of money which the one-mill levy provides for the court fund of the county;
- (e) increases and decreases in the population of the particular county;
- (f) increases and decreases in the assessed valuation of the property in the county;
- (g) increases in the number of docketed cases in the county over the previous two or three years;
- (h) the type of such cases, i.e., civil, criminal (jury), criminal (non-jury);
- (i) increases or decreases in the crime rate in the particular county;
- (j) any other matters which the district judge calls to the attention of the State Board of Finance and which the Board deems relevant in making a determination of future court needs.

We do not mean to imply by anything said above that a county is prohibited from making application for assistance from the state court fund at times other than near the end of the fiscal year. They are not. Emergencies may arise at other times. The original estimate of need and the amount provided from the state court fund may prove to be insufficient. But the chief purpose of § 16-3-28, supra, is to make every effort to insure that the courts of the counties will have the funds necessary to properly operate during the ensuing fiscal year.