

Opinion No. 65-114

June 25, 1965

BY: OPINION OF BOSTON E. WITT, Attorney General Oliver E. Payne, Deputy Attorney General

TO: Mr. Ben Mason, Chief, Budget Division, Department of Finance and Administration, State Capitol Building, Santa Fe, New Mexico

QUESTION

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Does Section 9, Chapter 313, Laws 1965 (the General Appropriation Act) require the Department of Finance and Administration to revert \$ 50,000 from the cash balance of the New Mexico Real Estate Commission on June 30, 1965?

CONCLUSION

Yes.

OPINION

{*195} ANALYSIS

Section 9, Chapter 313, Laws 1965 (General Appropriation Act) makes appropriation for some twenty-seven boards. In the first paragraph thereof it is provided that "Except as otherwise stated, balance in the funds included in this section shall not revert at the end of the fiscal year but shall remain available for use by the respective boards during the following fiscal year."

Immediately underneath this provision the specific appropriations are made. In the case of the Real Estate Board the legislature provided, "REAL ESTATE BOARD, the sum of \$ 60,089. Provided, that from cash balances remaining on June 30, 1965, fifty thousand dollars (\$ 50,000) shall revert to the general fund." Of the twenty-seven boards only two have to revert funds.

The question posed arises because of the provisions contained in the 1964 General Appropriation Act and in Section 67-24-25, N.M.S.A., 1953 Compilation.

Section 9, Chapter 2, Laws 1964 (General Appropriation Act) made appropriations to these same twenty-seven boards. That Act, like the 1965 General Appropriation Act, also provided that "Except as otherwise stated, balances in the funds included in this section shall not revert at the end of the fiscal year but shall remain available for use by the respective boards during the following fiscal year." There was no provision in the

1964 Act for a reversion of Real Estate Board funds. Thus in the absence of the reversion feature included in the 1965 General Appropriation Act there would have been no reversion of such funds on June 30, 1965.

It is clear, however, that the legislature is never bound by a law in such a way that it has no power to change it. The legislature itself cannot limit its authority to subsequently alter, amend or repeal existing statutes. **Stone v. City of Hobbs**, 54 N.M. 237, 220 P. 2d 704.

Section 67-24-25, supra, enacted in 1959, provides that fees received by the Real Estate Board shall be kept in a separate fund and the section also appropriated the funds for Commission expenses.

This section and the General Appropriation Act of 1959 (Chapter 288, Laws 1959) were the subject of Opinion 60-124. However, the facts giving rise to the "no reversion" holding in that opinion were not the same as in the present situation. We were then dealing with a General Appropriation Act which also provided that the cash balances of the Real Estate Board were to revert, while Section 67-24-25, supra, provided for the special "real estate commission fund." But the principle which the opinion {*196} turned on was that these two Acts were passed **in the same session**. That being the case, Section 26 of the General Appropriation Act of that year (1959) became applicable. That Section provided as follows:

If any items included in this general appropriations act are appropriated in special acts of the **twenty-fourth legislature**, the appropriations in said special acts of the twenty-fourth legislature shall apply and such appropriations in this general appropriations act, whether of the same amounts, or larger or smaller amounts shall be null and void." (Emphasis added)

That year the enactment of Section 67-24-25, supra, providing for a special fund and appropriating the moneys from fees received was a special act of the twenty-fourth legislature and thus unexpended balances of fees were held not to revert.

We have no such situation here. The twenty-seventh legislature enacted no special act appropriating money to the Real Estate Board. We are here faced with a situation where we have two inconsistent statutes, each of which is specific, one enacted in 1959 and the other enacted in 1965. The latter must control to the extent of the repugnancy even in the absence of a repealing clause in the later statute. **State v. Valdez**, 59 N.M. 112, 279 P.2d 868.

We believe the decision in **State v. State Board of Finance**, 59 N.M. 121, 279, P. 2d 1042 is controlling as to the inquiry here in question. In that case there was a specific provision in the Board of Barber Examiners' Act which set up a separate and permanent fund derived from fees, which fund was for the maintenance of the Board. Yet the General Appropriation Act of 1953 provided that balances remaining to the credit of the Barber Board were to revert. The Court held that the legislature was empowered to

cause balances remaining in the fund -- and derived from fees -- to revert at the end of each fiscal year of the biennium period.

The Court quoted with approval the following statement from the decision in *Gulf Ins. Co. Co. v. James, Tex.*, 185 S.W. 2d 966:

If it should be conceded for the sake of the discussion that the special funds here under consideration were levied under the police power, and only for the purpose of supervising the insurance business the balances remaining on hand unexpended for supervisory purposes at the end of the year, or at the end of the biennium for which they were levied, could be used for general purposes."

See also **New Mexico Board of Public Accountancy, 61 N.M.** 287, 299 P. 2d 464, which held that the legislature could provide for the reversion of all cash balances -- including voluntary donations to the Board.

The legislative pronouncement contained in the 1965 General Appropriation Act, which specifically calls for a reversion of fifty thousand dollars from Real Estate Board cash balances, is its most recent mandate and there must be compliance therewith.