

Opinion No. 65-172

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

TO: Alex J. Armijo, State Auditor, Capitol Building, Santa Fe, New Mexico

QUESTION

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May the Department of Finance and Administration refuse to approve expenditures from a single budget line item when the appropriated funds are available and the proposed expenditure is for an item which falls within the category of the particular line item, but which item was not listed in the original budget request?

CONCLUSION

No.

OPINION

{*285} ANALYSIS

It is an uncontrovertible fact that conditions change and this applies to state government along with everything else. Budgets are estimates -- even after they have been approved. An agency or department may have listed a new typewriter in a budget request line item and it may subsequently develop that it has much more need for a calculator.

These are matters that the department head is best qualified to judge. He knows the needs of his {*286} agency, and, in order to efficiently administer his department, he is the one to make such determinations. No one agency could possibly be qualified to know and understand the needs of every other agency of state government. The legislature is aware of this and that is why absolutely no statutory authority exists for the Department of Finance and Administration to disapprove a particular purchase, for instance a typewriter, simply because the original budget request listed a calculator.

Our Supreme Court recognized this doctrine in **State v. Hartman**, 69 N.M. 419, 367 P. 2d 918 (1961) stating:

". . . if the budget as submitted is within the amounts appropriated and the items are proper, he [Director of the Department of Finance] is given no discretion except to approve them."

Any other rule would allow one department to substitute its judgment for that of the director of every other department. The legislature never so intended as is shown by the fact that it has never given such authority to any one agency.