

Opinion No. 65-224

November 16, 1965

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

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

QUESTION

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Must the Peanut Commission, created by the Peanut Act, Section 45-23-8, N.M.S.A., 1953 Compilation (P.S.), furnish and file a proposed budget with the Department of Finance and Administration?

CONCLUSION

Yes.

OPINION

{*367} ANALYSIS

This question arises because the money which the Peanut Commission spends is derived not from an appropriation but from the processors' yearly license fees and peanut excise taxes levied pursuant to Sections 45-23-5 and 45-23-6, supra. Because of the language of the 1965 General Appropriation Act, the Department of Finance and Administration feels a budget must be made by the Peanut Commission and approved by the Department. The language in question is recorded in Laws 1965, Ch. 313, Section 8 as follows:

"Peanut Commission. -- All receipts from license fees and excise taxes authorized by Section 45-23-5 and 45-23-6 New Mexico Statutes Annotated, {*368} 1953 Compilation. **All expenditures made from these funds shall be in accordance with annual budgets approved by the department of finance and administration.**" (Emphasis supplied)

Actually, the above section changes nothing. Sections 45-23-5 and 45-23-6 of the Peanut Act, supra, provide as follows:

"Processor license. -- Every processor shall pay to the commission an annual license fee of fifty dollars (\$ 50.00)."

"Peanut excise tax. -- In addition to all other taxes, there is levied an excise tax on all peanuts grown and sold in this state, except for peanuts sold for seed. The amount of the tax shall be determined by the commission each year and calculated to return sufficient revenue to meet the amount of the commission's **approved budget, less the amount of the balance in the peanut fund**, but not to exceed a tax of one dollar (\$ 1.00) a ton. Each processor shall collect the tax on all peanuts bought by him and shall pay to the commission, not later than the tenth day of each month, the amount collected during the previous month. Each processor shall keep a complete record of the amount of peanuts subject to tax bought by him for not less than two [2] years, and the record may be inspected by the commission or its agent at any time." (Emphasis supplied)

The statutes specifically provide that there must be an "approved budget". The money in the approved budget" comes from the peanut excise tax authorized by 45-23-6, supra, and from the amount in the "peanut fund", which include the processors' license fees authorized by 45-23-5, supra. We are of the opinion that an "approved budget" is a budget which has been approved by the Department of Finance and Administration.

Section 11-4-1.8, N.M.S.A., 1953 Compilation, empowers the State Budget Division of the State Department of Finance and Administration to perform various functions, the following of which is pertinent to this opinion:

"Annual operating budgets -- Supervision and control -- Submission of proposed budgets -- Approval -- Review by governor. -- Each state agency shall annually on or before May 1 submit to the state budget division a budget for the ensuing fiscal year, in such form as may be prescribed by the division and containing such information concerning the anticipated receipts, expenditures and balances on hand as may be prescribed by law or by the state budget division. Such budget shall be made by any state agency for the fiscal year covered by said budget until the budget shall have been approved by the state budget division, Provided that any action by the division shall be subject to review and modification by the governor."

"State agency" is defined in Section 11-4-1.1, N.M.S.A., 1953 Compilation, as follows:

"State agency" defined. -- "State agency" means any department, institution, board, bureau, commission, district or committee of government of the state of New Mexico and means every office or officer of any of the above."

The statute does not draw any distinction between a commission which derives its funds from legislative appropriation and a commission, such as the Peanut Commission, which receives tax money directly.

Therefore, it is our opinion that the Peanut Commission must prepare and submit a budget for the {*369} approval of the State Department of Finance and Administration.