

Opinion No. 68-37

April 2, 1968

BY: OPINION OF BOSTON E. WITT, Attorney General

TO: Herbert H. Hughes, Chief Budget-Financial Control Division Department of Finance and Administration Legislative-Executive Building Santa Fe, New Mexico

QUESTIONS

FACTS

Chapter 2, Section 3, Laws of 1967 (Special Session), the general appropriations act for the fifty-sixth and fifty-seventh fiscal years, appropriated by line item various amounts for the district attorneys of the eleven judicial districts of this state. Line item 1 appropriated a salary for each district attorney in the amount of \$ 3,000 for each of the above fiscal years. Line item 2 appropriated to each juvenile court attorney of the first, second, third, fifth, ninth and eleventh judicial districts a salary of \$ 7,200. The juvenile court attorneys of the other five judicial districts were each appropriated a salary of \$ 5,000 for the fifty-sixth and fifty-seventh fiscal years. Line item 3 appropriated various amounts as "Other salaries" for the offices of the district attorneys of the eleven judicial districts. Last of all, line item 4 appropriated various amounts for "Retirement and Social Security" for each judicial district.

Then, in 1968, the legislature enacted Chapter 65 which provides in part as follows:

"Each district attorney is ex officio juvenile court attorney in his judicial district, and as juvenile court attorney shall receive a salary of nine thousand dollars (\$ 9,000) a year from the state general fund. No additional salaries shall be paid on account of services rendered the state as juvenile attorney."

The effective date of this act is July 1, 1968, the beginning of the fifty-seventh fiscal year. In spite of this increase in salary for all juvenile court attorneys in this state, only the sixth judicial district received a budgetary increase in the supplemental appropriations Act of 1968.

1. Is line item 2 "Salary of Juvenile Court Attorney" amended to read \$ 9,000?
2. Is line item 4 "Retirement and Social Security" adjusted to meet the requirements of the increase in salary?
3. Is the "total" appropriation in each case increased to meet the requirements of line items 2 and 4, or does the total remain the same thereby requiring that the increase in line item 2 and 4 be absorbed by reducing line item 3?

CONCLUSIONS

1. Yes.
2. See analysis.
3. See analysis.

OPINION

{*67} ANALYSIS

Chapter 65 of the Laws of 1968, set forth above, repealed Section 13-8-5, N.M.S.A., 1953 Compilation which provided as follows:

"The several district attorneys {*68} shall be the juvenile court attorneys in their respective districts, and as juvenile court attorneys shall each receive a salary of five thousand dollars (\$ 5,000) a year, paid out of the state general fund. In judicial districts having a population in excess of forty-seven thousand five hundred persons in the last federal decennial census, the salary of the juvenile court attorney shall be seven thousand two hundred (\$ 7,200) a year."

Presumably, the appropriations made for the juvenile court attorneys of the eleven judicial districts for the fifty-sixth and fifty-seventh fiscal years were made pursuant to this section of the New Mexico Statutes. Now we find that the legislature has provided that beginning July 1, 1968, all juvenile court attorneys are to receive \$ 9,000 a year. See Chapter 65, Laws of 1968, supra.

We must look to the general appropriations act of 1967 and the supplemental appropriations act of 1968 to find where the salary increase of the juvenile court attorneys is to come from. Chapter 65, Laws of 1968 supra, increasing the salaries of juvenile court attorneys is not and does not purport to be an act appropriating money. We have already set forth the salaries of the juvenile court attorneys as provided in the general appropriations act of 1967 in our statement of the facts above. Looking to the supplemental appropriations act of 1968, we find only two provisions which are relevant here.

The first relevant provision of the supplemental appropriations act of 1968 is Section No. 3 D which provides that the District Attorney of District Six is to receive a budgetary increase of \$ 7,877 "to be used for salaries and employee benefits." This amends line items 3 and 4 of the 1967 general appropriations act for the sixth judicial district. We can find nothing in the supplemental appropriations act appropriating additional money to increase the salaries of juvenile court attorneys.

The other relevant provision of the supplemental appropriations act of 1968 is Section 12 which provides as follows:

"If any items included in this act or in Laws 1967 (SS), Chapter 2, are **appropriated in special acts** of the twenty-eighth legislature, second session, the appropriations in this act or in Laws 1967 (SS), Chapter 2, whether of the same amounts, or larger or smaller amounts, shall be void unless otherwise specified in this act." (Emphasis added).

This provision, however, is inapplicable in the present case as Chapter 65, Laws of 1968, *supra*, does not make an appropriation.

The actual question to be decided is whether the general appropriations act of 1967, as amended, is controlling over Chapter 65, Laws of 1968, *supra*, which increases the salaries of Juvenile court attorneys to \$ 9,000 a year. In **State v. State Board of Finance**, 59 N.M. 121, 279 P.2d 1042 (1955), the New Mexico Supreme Court held that an appropriations act may temporarily supersede a statutory appropriation so long as the appropriation contained in the appropriations act does not attempt to go beyond the biennium mentioned. See also Attorney General Opinion No. 64-49, issued March 17, 1967, where this office discussed what may be included in a general appropriations act.

The rule in **State v. State Board of Finance**, *supra*, appears to be a modified version of a general rule of statutory construction. That is when two acts relate to the same subject and are irreconcilably in conflict, the later enactment of the legislature controls. **State v. Lujan**, 76 N.M. 111, 116, 412 P.2d 405 (1966). The later enactment in **State v. State Board of Finance** *supra*, was the general appropriations act and therefore the provisions {69} of the general appropriations act were held to temporarily supersede the prior statutory enactment of the legislature.

In the present case the first enactment of the legislature was the general appropriations act of 1967. Chapter 2, Section 3, line item 2 of the general appropriations act sets the salaries of juvenile court attorneys for a two year period. The later enactment is the 1968 enactment of Chapter 65 which raises the salaries of juvenile court attorneys beginning July 1, 1968. It is our opinion that the later enactment is controlling and line item 2 of Section 3, Chapter 2, Laws of 1967 (SS) has been repealed by implication. This conclusion has been reached through a rule of statutory construction. The reason for rules of statutory construction is to determine legislative intent.

Our conclusion is in accord with legislative intent as expressed in the supplemental appropriations act of 1968. Section 1 of the supplemental appropriations act provides in part as follows:

"LEGISLATIVE INTENT. -- The provisions of Laws 1967 (SS), Chapter 2, shall control expenditures for . . . judicial . . . agencies . . . for the fifty-sixth and fifty-seventh fiscal years unless otherwise provided in this act or by any other act adopted by the twenty-eighth legislature, second session."

Chapter 65, Laws of 1968, which raises the salaries of juvenile court attorneys to \$ 9,000 a year is an act adopted by the twenty-eighth legislature, second session and therefore it was the express intent of the legislature that Chapter 65 be controlling over

the provisions of the general appropriations act of 1967. The answer to your first question is therefore, yes.

In answer to your second question, line item 4 may be adjusted to meet the increase in salaries of the juvenile court attorneys.

Last of all, we have been asked if the total appropriation of the general appropriation act of 1967 (SS) is to be increased to meet the increased salaries of the juvenile court attorneys. It is clear that no additional appropriation has been made to pay the increased salaries of juvenile court attorneys. If the increased salaries are to be paid, they must come from line items 3 and 4 of Section 3 of the general appropriations act.

By: Gary O'Dowd

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