

## **Opinion No. 69-09**

February 17, 1969

**BY:** OPINION OF JAMES A. MALONEY, Attorney General

**TO:** Honorable Odis Echols, Jr., State Senator, P.O. Box 670, Clovis, New Mexico 88101

### **QUESTIONS**

#### **FACTS**

In Curry County for the fiscal year July 1, 1968 to June 30, 1969, budgets were prepared on a valuation of \$ 51,701,007 and the tax rates computed on this valuation. Such tax rates by statute are to be certified to the various counties by the First Monday in September of each year.

On August 29, 1968 the Local Government Division of the Department of Finance and Administration was notified by the county officials of Curry County that the final valuation for the County would be \$ 56,422,077 and consequently the tax rates were adjusted accordingly. In making this adjustment the Local Government Division of the Department of Finance and Administration made a mistake in the county bond sinking fund and ran a tax rate for \$ 5,000.00 instead of \$ 50,000.00, thus having an under levy of \$ 45,000.00.

On October 9, 1968, it was discovered that there was a further increase in the assessed valuation of \$ 1,020,340 which would result in an over levy of approximately \$ 40,000.00. The County Commissioners asked about the advisability of adjusting the rates to take this over levy into account.

At this point, the Local Government Division reviewed the adjusted rates and discovered the mistake it had made on the county bond sinking fund. Because of this error it was actually an under levy of approximately \$ 5,000.00. Since the certified tax rates had already been provided to the county assessor and the tax extension work was going on, it would have been much too expensive to stop everything, adjust the tax rates to the new value and make the adjustment for the Local Government Division mistake. Instead, the Local Government Division discussed the matter with the County Commissioners and proposed adjusting the tax distribution to adjust for the two off-setting errors. The proposed adjustment was made by the Local Government Division without request of the County. In effect the Local Government Division without request of the County. In effect the Local Government Division accomplished the something as if it had recomputed the tax rates to adjust for its error. The excess money that would have gone to the county operating funds, school interest and school principal is not to being credited to the county sinking fund.

No adjustment was made on state funds, court funds, schools five mill levy, school district levy or municipal levy. In these funds even though the tax rates would have been adjusted, the rates in these funds would remain the same.

## QUESTIONS

May the Department of Finance and Administration make line item budget transfers in a budget of a local subdivision without the request of such subdivision in order to adjust for increased revenue in some budget line items and a deficit in other budget line items?

## CONCLUSION

Yes.

## OPINION

### {\*16} ANALYSIS

A budget of a subdivision of the state is an estimate, based upon past experience and knowledge of foreseeable future requirements of the financial needs of the subdivision for the coming fiscal year. Such a budget is set forth by way of "line items". Such line items are merely a statement of calculated budgetary needs within each proposed area of expenditure. Once such budget has been established it is submitted to the Local Government Division of the Department of Finance and Administration for its scrutiny. Section 11-2-57, N.M.S.A., 1953 Compilation. It has the authority, thereunder to correct, revise and amend such budgets and to certify a final budget prior to the First Monday in September of each year.

Subsection G of Section 11-2-57, supra, authorizes a transfer of funds from one budget item to another upon the approval of the Department of Finance and Administration, **when requested**, and {\*17} emergency condition meriting such transfer exists and it is not prohibited by law. In addition to the above, the subsection provides that in case of an emergency necessitating the expenditure for items **not provided for** in the budget, and upon approval of the Director of the Department of Finance and Administration, the budget may be revised to authorize such expenditures.

Subsection I provides that the division will supervise the disbursement of funds so that no expenditures will be made in excess of budget items, for items not budgeted or for illegal expenditures.

It seems clear that the clerical error resulting in a budget line deficit in this case falls into the category of authorized budget line transfers which may be accomplished by the Director of the Department of Finance and Administration with or without request of the local authorities.