

Opinion No. 69-58

June 16, 1969

BY: OPINION OF JAMES A. MALONEY, Attorney General Gary O'Dowd, Deputy Attorney General

TO: Maralyn S. Budke, Director, Legislative Finance Committee, Legislative-Executive Building, Santa Fe, New Mexico 87501

QUESTIONS

FACTS

The Act creating the New Mexico Fair Employment Practice Commission will be repealed as of June 20, 1969. The Equal Employment Opportunities Act, which created the Fair Employment Practice Commission, will be replaced by the Human Rights Act enacted by the 1969 session of our legislature. See Chapter 196, Laws of 1969, also referred to as House Bill 142 in this opinion.

The Fair Employment Practice Commission is an independent commission. However, to carry out its functions and duties it was necessary for it to utilize the facilities and oftentimes the staff of the Labor and Industrial Commission. The legislature recognized this practice when it made appropriations to the Labor and Industrial Commission. The Fair Employment Practice Commission received its appropriation through the Labor and Industrial Commission. This practice was followed by the 1969 session of our legislature when House Bill 300, the General Appropriations Act, was drafted. House Bill 300, Chapter 282, Laws of 1969, provides as follows:

LABOR AND INDUSTRIAL COMMISSION:

1. Salary of the commissioner \$ 12,600 \$ 12,600
 2. Other commission salaries
and expenses 123,000 123,000
 3. Fair employment practices
commission 22,400 22,400
 4. Apprenticeship council 17,000 17,000
- Total \$ 175,000 \$ 175,000

Provided that funds appropriated in item (3) shall revert to the general fund if House Bill 142, Twenty-Ninth Legislature, First Session, becomes law.

The Honorable David F. Cargo, Governor of the State of New Mexico, line item vetoed the underscored portion of the Labor and Industrial Commission's appropriation. Thus, rather than the funds appropriated to the Fair Employment Practice Commission reverting because of the enactment of the Human Rights Act, as provided by the

legislature, the appropriation to this commission remains in the total appropriation of \$ 175,000.00 to the Labor and Industrial Commission.

QUESTIONS

1. May the Labor and Industrial Commission apply the \$ 22,400.00, struck by the governor's veto, to any of the purposes set out in the other line items (those being: salary of the commissioner, other commission salaries and expenses; and apprenticeship council)?
2. If the \$ 22,400.00, originally appropriated to the Fair Employment Practice Commission may not be applied to any of the other enumerated line items, for what purpose, if any, could the amount be budgeted and expended?

CONCLUSIONS

1. Yes, but see analysis.
2. See analysis.

OPINION

{*88} ANALYSIS

In Attorney General Opinion 69-25, issued April 9, 1969, this office discussed the power of the Governor to execute line item vetoes in bills carrying appropriations. In this opinion we pointed out that Article IV, Section 22 of the New Mexico Constitution grants to the governor the power to line item veto "any part or parts, item or items" of any bill appropriating money. We concluded that the {*89} governor could exercise this power only if the approved part of the bill was not made contingent on the vetoed part.

It is clear that the governor could not have merely vetoed the language providing that funds appropriated to the Fair Employment Practice Commission would revert upon passage of House Bill 142, the Human Rights Act, and leave an appropriation to this Commission in the Labor and Industrial Commission's appropriation. However, because of the particular method of appropriating money followed in House Bill 300, it is our opinion that by vetoing the line item to the Fair Employment Practice Commission, as well as the proviso accompanying the Labor and Industrial Commission's appropriation, the governor complied with the rule set forth in the opinions relied on in Attorney General Opinion 69-25. It is concluded that the Labor and Industrial Commission now has an appropriation of \$ 175,000.00 for the fifty-eight and fifty-ninth fiscal years. The Labor and Industrial Commission therefore has \$ 22,400.00 of unallocated funds in its budget.

We are asked how the unallocated funds of the Labor and Industrial Commission may be spent. We have been unable to find any authority which we deem controlling in

answering this question. However, it is the purpose of statutory construction to arrive at the intention of the legislature. One of the fundamental rules of statutory construction is that in order to determine the intention of the legislature the whole act must be read together. We must therefore look to other provisions of the general appropriations act to determine how unallocated or unearmarked money may be spent.

Reviewing the general appropriations act for the fifty-eighth and fifty-ninth fiscal years, we note that a number of agencies have been appropriated funds which are unallocated. For example, the Department of State Forestry has been appropriated \$ 135,000.00 for salaries and expenses, \$ 20,000.00 for emergency fire suppression for a total appropriation of \$ 155,000.00. This department has also been appropriated all funds received for fire protection programs for other agencies. Presumably, the legislature intended that this additional unearmarked appropriation could be used to pay salaries and expenses of the department.

Another example is the Veteran's Service Commission which received an appropriation for the fifty-eighth fiscal year as follows:

"VETERANS SERVICE COMMISSION:

1. Salary of director \$ 10,800
 2. Other salaries and expenses 174,650
 3. Bond premium (Section 74-6-9) 4,550
- Total \$ 190,000

In addition to the above appropriation from the general fund, there is appropriated all income received under the provisions of Section 72-1-20.1."

Again we must conclude that the legislature intended that income received under the provisions of Section 72-1-20.1 could be used to pay salaries and expenses of the commission.

From the above and similar appropriations contained in the general appropriations act, we must conclude that unallocated or unearmarked funds of an agency may be expended to carry out the general functions of the agency even though some of the unallocated or unearmarked funds will be used for purposes which the legislature has deemed expedient to line item, such as salaries and expenses. Applying this conclusion to the present case it is our opinion that the Labor and Industrial Commission may spend any of the unallocated or earmarked \$ 22,400.00 found in its appropriation for any purpose within its statutory powers.