

Opinion No. 73-09

January 29, 1973

BY: OPINION OF DAVID L. NORVELL, Attorney General

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QUESTIONS

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May the Governor spend general revenue-sharing funds without a legislative appropriation?

CONCLUSION

No.

OPINION

{*16} ANALYSIS

Congressional legislation making federal funds available to the states is the final authority over the method by which such funds are to be distributed by the states. See **California Department of Human Resources v. Java**, U.S. , 91 S. Ct. 1347, 28 L. Ed. 2d 666 (1971); **Rosado v. Wyman**, 397 U.S. 397, 90 S. Ct. 1207, 25 L. Ed. 2d 442 (1970); **King v. Smith**, 392 U.S. 309, 88 S. Ct. 2128, 20 L. Ed. 2d 1118 (1968).

The State and Local Fiscal Assistance Act of 1972 (Public Law 92-512; 86 Stat. 919), commonly referred to as the Revenue Sharing Act, provides as follows in Section 123:

"(a) Assurances to the Secretary. -- In order to qualify for any payment under subtitle A for any entitlement period beginning on or after January 1, 1973, a State government or unit of local government must establish (in accordance with regulations prescribed by the Secretary, and, with respect to a unit of local government, after an opportunity for review and comment by the Governor in which such unit is located) to the satisfaction of the Secretary that --

(1) it will establish a **trust fund** in which it will deposit all payments it receives under subtitle A ([Subtitle A is the basic provision for the Allocation and Payment of Funds];

(2) it will use amounts in such trust fund (including any interest earned thereon while in such trust fund) during such reasonable period or periods as may be provided in such regulations;

(3) [not applicable to the question; deals only with local units]

(4) **it will provide for the expenditure of amounts received under subtitle A only in accordance with the laws and procedures applicable to the expenditure of its own revenues;** " (Emphasis added.)

* * *

The state constitutional procedures applicable to the expenditure of state funds vests the authority in the Legislature. It is the branch of government which appropriates moneys for the expenses of state government. Article {17} IV, Section 16, New Mexico Constitution. Article IV, Section 30 of our state Constitution provides:

"Except interest or other payments on the public debt, money shall be paid out of the treasury **only upon appropriations made by the legislature.** (Emphasis added.)

The control which the chief executive has over legislative appropriations is derived from his constitutional power of item veto contained in Article IV, Section 22, which provides in pertinent part as follows:

"The governor may in like manner approve or disapprove any part or parts, item or items, **of any bill appropriating money**, and such part or items approved shall become a law, and such as are disapproved shall be void unless passed over his veto, as herein provided." (Emphasis added.)

When the Governor exercises his right of item or partial veto he is exercising a quasi-legislative function. **State ex rel. Dickson v. Saiz**, 62 N.M. 227, 308 P.2d 205.

To sum up: (1) When Congressional acts grant federal funds to the states, Congress may provide therein for distribution procedures; (2) the federal law providing for revenue sharing (State and Local Fiscal Assistance Act of 1972) mandates that expenditure of funds received thereunder shall be in accordance with the laws and procedures applicable to the expenditure by the state of its own revenues; (3) our laws and procedures, constitutional and statutory, designate the Legislature as the branch of government empowered to make appropriations; (4) the Governor's power over such appropriations may be exercised within the confines of his constitutional item veto power.

By: Oliver E. Payne

Deputy Attorney General