

## Opinion No. 73-42

May 2, 1973

**BY:** OPINION OF DAVID L. NORVELL, Attorney General

**TO:** Robert E. Kirkpatrick Executive Officer State Board of Finance Legislative-Executive Building Santa Fe, New Mexico 87501

### QUESTIONS

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(1) Is a grant made pursuant to the authority contained in Laws 1973, Chapter 333, Section 4B, limited to the maximum amount of \$ 100,000 or is it only limited to twenty five or forty percent of eligible costs of the project, depending on the population of the "local authority"?

(2) Does the language "a grant including all other sources of state grant funds" prohibit the State Board of Finance from making a grant to a local authority (from either its Emergency Fund or Emergency Water Supply Fund) which would exceed the \$ 100,000, the twenty-five percent or the forty percent mentioned above, which had been granted to the local authority from the \$ 1,500,000 total fund appropriated by Laws 1973, Chapter 333?

#### CONCLUSIONS

(1) The grant may be twenty-five percent or forty percent of eligible project costs (depending on the population of the local authority) but **not** in excess of \$ 100,000.

(2) If a grant in the maximum amount permitted by Laws 1973, Chapter 333, creating the Water Supply Construction Act Fund, is made from that fund for an eligible project, an additional amount from other sources of state grant funds cannot be granted by the State Board of Finance for that project. However, in addition to the grant a **loan** up to a maximum of \$ 100,000 could be made.

### OPINION

#### {\*81} ANALYSIS

The answer to each of your questions depends upon the proper interpretation of the language contained in Laws 1973, Chapter 333, Section 4B, which provides in its entirety as follows:

"B. **Grants and loans** shall be made only for eligible construction items as defined in Subsection F of this section. **A loan** shall be for a period of time not to exceed twenty

years with an annual interest rate of five and one-half percent on the unpaid balance and **shall not exceed one hundred thousand dollars** (\$ 100,000). The repayment of loans shall be in equal annual installments. **A grant including all other sources of state grant funds, shall not exceed one hundred thousand dollars** (\$ 100,000) **or:**

(1) twenty-five percent of the eligible construction items for the construction or modification of water supply facilities which will serve fifty-five hundred persons or more **whichever is less; or**

(2) forty percent of the eligible construction items for the construction or modification of water supply facilities which will serve fewer than fifty-five {<sup>\*82</sup>} hundred persons **whichever is less.** " (Emphasis added)

We can see from the language of Section 4B, above, particularly the underlined portions, that the maximum grant authority for a project is \$ 100,000 -- this because of the use of the phrase "whichever is less". This effectively placed a \$ 100,000 ceiling on an eligible project grant.

In answer to your second question, inclusion of the phrase "including all other sources of state grant funds" prevents the Board of Finance from supplementing grants made under Laws 1973, Chapter 333. Quoting again from Section 4B this becomes quite apparent:

"A grant **including all other sources of state grant funds**, shall not exceed one hundred thousand dollars (\$ 100,000) or twenty-five percent of the eligible construction items . . . **whichever is less;** or forty percent of the eligible construction items . . . **whichever is less.** " (Emphasis added)

However, **in addition** to a grant the Act would permit a **loan** on an eligible project up to a maximum of \$ 100,000.

By: Oliver E. Payne

Deputy Attorney General