

**Opinion No. 75-62**

November 18, 1975

**OPINION OF:** TONEY ANAYA, Attorney General

**BY:** W. Royer, Assistant Attorney General

**TO:** Board of Finance State of New Mexico State Capitol Building Santa Fe, New Mexico 87503

**QUESTIONS**

May the funds appropriated to the Board of Finance for the Emergency Water Supply Fund be loaned to qualifying communities?

**CONCLUSION**

Yes.

**ANALYSIS**

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The Emergency Water Supply Fund Act, Section 14-26-9, NMSA, 1953 Comp. provides:

"The 'emergency water supply fund' is created in the state treasury. Expenditures from this fund shall be made upon order of the state board of finance {\*168} when the board determines that an emergency exists requiring the expenditure in order to provide an adequate and safe drinking water supply for residents of any community of less than 5,000 population in New Mexico using a drinking water supply system in common. Disbursements from the fund shall be upon vouchers signed by the director of the department of finance and administration or his authorized representative."

The 1975 Legislature appropriated \$ 100,000 to the Emergency Water Supply Fund by Chapter 146, Laws of 1975 for use in the sixty-fourth fiscal year. Any unexpended or unencumbered balance remaining in the fund at the end of the sixty-fourth fiscal year will revert to the general fund. Similar appropriations were made for the sixty-first fiscal year (Chapter 25, Laws of 1972) sixty-second fiscal year (Chapter 309, Laws of 1973), and the sixty-third fiscal year (Chapter 41, Laws of 1974).

The expenditure of public funds by the Board of Finance to meet emergencies is governed by Sections 11-1-1.1 through 11-1-1.4, NMSA, 1953 Comp. The sections provide:

"11-1-1.1. State board of finance -- Loans and grants of emergency funds. -- If the state board of finance determines that an emergency exists that warrants such action, it may lend or grant to any state agency, board, commission, municipal corporation or other political subdivision organized under the laws of the state that sum of money the board determines reasonable and appropriate **from any funds appropriated to the board for use in meeting emergencies.** (Emphasis added)

11-1-1.2. Loans of emergency funds -- Terms and conditions for repayment -- Security and interest. -- The state board of finance may prescribe those terms and conditions it deems proper with respect to the repayment of any loan and the application of the proceeds of the loan, and it may require or waive security by way of the pledge of revenues or otherwise and may require or waive interest, as the board determines proper under the circumstances.

11-1-1.3. Loans or grants obtained by political subdivisions -- Application of proceeds. -- Any municipal corporation or other political subdivision obtaining a loan or grant shall apply the proceeds thereof only for the purposes stated by the state board of finance in its action approving the loan or grant.

11-1-1.4. Repayment of loans -- Disposition of Re receipts -- Crediting emergency fund -- Deposit in general fund. -- Any amount received by the state board of finance in repayment of any emergency loan shall be deposited by the board to the credit of the state board of finance emergency fund if the payment is received during the same fiscal year in which the loan was made. All payments made in any period subsequent to the close of the fiscal year in which the loan was made shall be deposited by the board in the general fund."

We note that Section 11-1-1.1, **supra**, applies to **all** funds appropriated to the Board of Finance for use in emergency circumstances. Section 14-26-9, **supra**, establishes the Emergency Water Supply Fund and the appropriations are made specifically to that fund. However, Section 14-26-9, {<sup>\*169</sup>} **supra**, also requires that the Board of Finance determine ". . . that an emergency exists . . ." The Board of Finance, by the statutory language, is the operative instrumentality of the Emergency Water Supply Fund. Therefore, it appears that the funds appropriated to the Emergency Water Supply Fund are in effect appropriated to the Board of Finance for use in meeting emergencies.

When two statutes are capable of coexistence, it is our duty to give effect to the provisions of each absent the express legislative intent to the contrary. **State v. New Mexico State Authority**, 76 N.M. 1, 411 P.2d 984 (1965); **State v. Sublett**, 78 N.M. 655, 436 P.2d 515 (Ct. App. 1968); **Morton v. Mancari**, 417 U.S. 535, 94 S. Ct. 2474, 41 L. Ed. 2d 290 (1974). Statutes that relate to the same class of things, here emergencies determined by the Board of Finance, are in **pari materia** and should be construed so that effect is given to every provision of each statute, if possible by reasonable construction. **State v. New Mexico State Authority, supra**, 76 N.M. at 18. Therefore, it appears that the Board of Finance may make loans from the Emergency

Water Supply Fund in accordance with the provisions of Sections 11-1-1.1 through 11-1-1.4, **supra**.

In any event, an analysis solely of Section 14-26-9, **supra**, leads us to the same result. In determining whether the funds appropriated to the Emergency Water Supply Fund may be loaned to communities, we must determine the meaning of the word "expenditure." The Legislature has not provided a definition for expenditure; therefore we can only look to judicial decisions to determine the proper use of the funds.

The word "expenditure" is not a word of art; it has no definitely defined meaning and the applicability of it to particular acts must be determined by the circumstances surrounding its employment. **United States v. Congress of Industrial Organizations**, 335 U.S. 106, 68 S. Ct. 1349, 92 L. Ed. 1849 (1948). "Expenditure" has been defined as the spending of money, payment, a laying out of money or a disbursement. **Crow v. Board of Superintendents of Stanislaus county**, 27 P.2d 655 (Cal. App. 1933); **Suppiger v. Enking**, 91 P.2d 362 (Idaho, 1939); and **Crout v. Gates**, 124 A. 76 (Vt. 1924). When these definitions are applied to the use of "expenditure" in Section 14-26-9, **supra**, it is our opinion that it refers only to the distribution of money from the fund to assure safe drinking water. The Legislature's directive to obtain safe drinking water is met by the acquisition, with state monies, of adequate water facilities.

However, it is our opinion that the term "expenditures" does not describe the manner in which such facilities are to be obtained. An expenditure is made, and the facilities obtained, by loaning the funds to the communities as well as by an outright gift or grant. Therefore, it is our opinion that the manner in which the expenditure is made, whether a gift, grant, or loan, has been left to the discretion of the Board of Finance.

If the Board of Finance chooses to loan the fund monies to the communities, several objectives are advanced. The fund is a limited amount. Therefore, if a grant or a gift is made, emergencies occurring early in the fiscal year have a greater chance of obtaining the necessary funding than emergencies occurring later in the fiscal year. If the funds are loaned to the communities and a reasonable {\*170} payback period required, funds become available to the Board of Finance to adequately meet emergencies that occur late in the fiscal year. The legislative directive is met because the emergencies are alleviated and safe water obtained; loaning the funds shifts the cost burden to the users of the system and thereby assures that the communities of the class are treated equally. Any loan repayment made after the close of the fiscal year would revert to the general fund.