

## Opinion No. 76-12

April 7, 1976

**BY:** OPINION OF TONEY ANAYA, Attorney General Robert E Robles, Assistant Attorney General

**TO:** Max R. Sanchez, State Auditor, Box 2383, Santa Fe, New Mexico 87501

### QUESTIONS

#### Facts

The Traffic Safety Commission, under Section 64-33-5 NMSA, 1953 Comp., has the power and duty:

["to organize, plan and conduct a statewide program of activities designed to prevent accidents . . . to serve as a clearing-house for all traffic safety materials and information used throughout the state . . . to cooperate fully with national safety organizations in bringing about greater effectiveness in nationwide accident prevention activities and programs. . . ."]

Student materials for defensive driving courses are obtained by the Traffic Safety Commission from the National Safety Council and are then consigned to approved sponsors for teaching purposes. Fees collected by sponsors from students are forwarded to the Commission in the form of checks made payable to the National Safety Council. The Commission forwards the checks to the National Safety Council where they are credited to the Commission's account.

When additional materials are requested by a sponsor, the Commission orders the materials from the Council and the order is charged to the Commission's account. The state does not presently appropriate monies for this program.

The State Auditor has posed certain questions with respect to the above procedures of the Traffic Safety Commission.

#### Questions

1. Does the credit balance with the National Safety Council constitute state funds?
2. Should money received by the Commission from sponsoring agents be deposited by the Commission with the New Mexico State Treasurer pursuant to Section 11-2-3, NMSA, 1953 Comp.?

3. Should the orders for materials from the National Safety Council be made on vouchers and checks processed through the Department of Finance and Administration pursuant to Section 11-2-43, NMSA, 1953 Comp.?

#### Conclusions

1. No.
2. No.
3. No.

### OPINION

#### {\*69} Analysis

1. There has been no New Mexico case which defines the term state funds. However, other state courts have ruled on the matter. In **The Navajo Tribe and the City of Phoenix, a municipal corporation v. Arizona Department of Administration**, 111 Ariz. 279, 528 P.2d 623 (1974), the Supreme Court pointed out that, only monies raised by the operation of some general law become public funds and cited, **Cyr & Evans Contracting Co. v. Graham**, 2 Ariz. App. 196, 407 P.2d 385 (1965). Custodial funds are not state monies. **MacManus v. Love**, 499 P.2d 609 (Colo. 1972). The term "public funds" refers to funds belonging to the state and does not apply to funds for the benefit of contributors for which the state is a mere custodian or conduit, **Pensioners Protective Assn. v. Davis**, 112 Colo. 535, 150 P.2d 974 (1944).

Opinion of the Attorney General No. 75-10, dated February 7, 1975, states that when the Health and Social Services Department administers federally financed programs under the Social Security Act to which no state monies are presently appropriated, it serves as an administrative conduit for federal funds, the title to which passes directly from federal government to the private corporations. Non-profit corporations, called providers, are occasionally contracted with to operate the programs.

In like manner, funds flow from sponsors through the Traffic Safety Commission to the National Safety Council. The title passed directly to the federal government. Therefore, under both case law and a prior Opinion of the Attorney General, funds for which the state is a mere custodian or administrative conduit as in the case at hand, are not state funds.

2. Section 11-2-3, **supra**, provides expressly for "Payment of **state** money into the treasury. . . ." (Emphasis added). It has been stated that in construing a statute a court must give the words used their ordinary meaning, **Mobile America, Inc. v. Sandoval County Commission**, 85 N.M. 794, 518 P. 2d 774 (1974). The ordinary meaning of the term state money is money or funds belonging to the state.

{\*70} Furthermore, in **The Navajo Tribe and the City of Phoenix, a municipal corporation v. Arizona Department of Administration, supra**, the court, while discussing a similar Arizona statute and a Constitutional provision similar to N.M. Constitution, Article 4, Section 30 which gives the legislature supreme power in matters of appropriations, stated that, "The rationale is, of course, that the people's money may not be spent without their consent. **Crane v. Frohmiller**, 45 Ariz. 490, 45 P.2d 955 (1935)." The courts, however, have rejected legislative attempts to appropriate federal or non-state funds. See State ex rel. **Sego v. King**, 86 N.M. 359, 524 P.2d 975 (1974); **MacManus v. Love, supra**.

As a consequence, Section 11-2-3, **supra**, by its ordinary meaning and purpose, has no application to non-state funds.

3. Section 11-2-43, **supra**, also provides expressly for "Disbursement of **state** funds. . . ." (Emphasis added). Therefore, by the ordinary meaning of the term state funds, Section 11-2-43 does not apply to non-state funds.

To read Sections 11-2-3, **supra**, and 11-2-43, **supra**, as limits on the use of these funds would unreasonably obstruct the commission in the exercise of its statutory duties and powers. The courts avoid such unreasonable constructions of statutes. **Sandoval v. Rodriguez**, 77 N.M. 160, 420 P.2d 308 (1966).

It is concluded, without defining the full scope of the term state funds, that funds for which the state acts as a mere custodian or conduit for the federal government are not state funds within the meaning of the term as used in Sections 11-2-3 and 11-2-43 NMSA, 1953 Comp.