

Opinion No. 88-78

December 14, 1988

OPINION OF: HAL STRATTON, Attorney General

BY: Scott Spencer, Assistant Attorney General

TO: The Honorable Cisco A. McSorley, State Representative, Bernalillo County, District 18, 804 Loma Vista Dr., N.E., Albuquerque, New Mexico 87106

QUESTIONS

1. May fees be charged to patrons using the New Mexico Supreme Court Law Library to generate income for the Library?
2. Do monetary gifts to the Library qualify as "other state funds" under the General Appropriations Act of 1988 (1988 N.M. Laws, Chapter 13.)

CONCLUSIONS

1. No.
2. No.

ANALYSIS

In the 1988 General Appropriations Act, ("Act"), 1988 N.M. Laws, ch. 13, the Legislature appropriated general fund money and "other state funds" to the Supreme Court Law Library as follows:

Other Int'l Svc
General State Funds/Inter- Federal
Item Fund Funds Agency Trnsf Funds Total

(a) Personal Services 143.1 5.7 148.8
(b) Employee Benefits 40.7 1.2 41.9
(c) Travel 1.2 1.2
(d) Maintenance & Repairs 6.4 6.4
(e) Supplies & Material 126.0 9.5 135.5
(f) Contractual Service 8.5 8.5
(g) Capital outlay 43.0 10.0 53.0
Subtotal 395.3

We understand that, in its budget review process, the Legislative Finance Committee staff had recommended that the Library charge fees to patrons to generate "other state funds" appropriated by the Act.

1. Pursuant to Section 18-1-1 NMSA 1978, a board of trustees ("Board") composed of the Chief Justice and Justices of the Supreme Court manages, controls and supervises the Library. In carrying out these duties, the Board may, pursuant to Section 18-1-3 NMSA 1978:

prescribe such rules and regulations for the management and control of the supreme court law library" as in the judgment of said board may seem fit and proper for the safety, care and custody of the library, shelving, books, documents and archives therein, and for the convenience and accommodation of the patrons of such library.

In addition, the Board shall "order and purchase all books for the library for which an appropriation is made and have full and complete management of all the financial affairs of the library." Section 18-1-4 NMSA 1978. No statute expressly authorizes the Board to charge fees to persons who use the library.

As a statutorily created body, the Board has only those express or implied powers conferred upon it by statute. See *Maxwell Land Grant Co. v. Jones*, 28 N.M. 427, 213 P. 1034 (1923). The Board's implied powers are those necessary to carry into effect its express powers. See *Wimberly v. New Mexico State Police Bd.*, 83 N.M. 757, 497 P.2d 968 (1972); *Kennecott Copper Corp., v. Employment Security Comm'n*, 78 N.M. 398, 432 P.2d 109 (1967). No New Mexico case directly addresses whether an administrative body may have implied power to impose a fee or other charge. However, previous New Mexico Attorneys General and courts of other jurisdictions have opined that administrative bodies do not have implied authority to charge fees for services.¹

The Attorney General opinions relied upon the case of *O'Dowd's Dairy v. Hoffman*, 52 N.J. Super. 135, 145 A.2d 40 (1958). In that case, the New Jersey court ruled that the Office of Milk Industry did not have implied power to impose the costs of a hearing upon a licensee as a condition of renewing the license. The court stated: "In every case that has been brought to our attention in which the costs or expenses of an investigation by an administrative body have been assessed against the corporation involved it has been done under the express terms of a statute." *Id.* at 138, 145 A.2d at 43.

For the same reasons and because such authority is not necessary to effectuate any of the Board's express powers, we do not believe the Board has any implied authority to impose fees on persons who use the library.

Specific legislation exists which expressly authorizes certain agencies to impose or collect fees or other charges.² Other legislation grants those same agencies general powers to carry out their statutory mandates.³

These laws were in effect in 1963 when the legislature enacted Sections 18-1-1, 18-1-3 and 18-1-4 by passing. 1963 N.M. Laws, ch. 27, § 1. We must presume that the legislature, in enacting a statute, knows existing law and does not intend to enact a law inconsistent with it or not in accord with common sense or sound reasoning. *State ex rel. Nichols*, 75 N.M. 438, 405 P.2d 924 (1965). Since other statutes existed in 1963 which expressly authorized agencies to charge or collect fees or other charges in addition to granting them general powers to carry out their statutory authority, we believe that had the legislature intended for the Board to impose or collect user fees, it would have made a similar express grant of that power.

The judiciary itself would have no authority to authorize the Board to impose or collect user fees. Article III, Section 1 of the New Mexico Constitution provides:

The powers of government are divided into three distinct departments, the legislative, executive and judicial, and no person or collection of persons charged with the exercise of powers properly belonging to one of these departments, shall exercise any powers properly belonging to any of the others, except as in this constitution otherwise expressly directed or permitted.

The power to make laws and appropriate money lies within the province of the Legislature. *Gamble v. Velarde*, 36 N.M. 262, 12 P.2d 559, (1939); *DeGraftenreid v. Strong*, 28 N.M. 91, 206 P. 694, (1922), while the judiciary interprets and enforces the laws. *State ex rel. Gomez v. Campbell*, 75 N.M. 86, 400, P.2d 956 (1965); *Raton Pub. Serv. Co. v. Hobbes*, 76 N.M. 535, 417 P.2d 32, (1966). The New Mexico Supreme Court has on several occasions confirmed and expanded upon the separation of powers doctrine. In *Tyler v. DiPaolo*, 76 N.M. 483, 416 P.2d 150 (1966), the court determined that recovery of legal fees in subcontractors' suits against prime contractors required legislative action and that the Court could not itself authorize them. In *DeGraftenreid v. Strong*, supra, the court determined that it lacked authority to add to, subtract from or amplify a statute's terms. In *Hughes v. Cleveland*, 47 N.M. 230, 141 P.2d 192 (1943), the court determined that the legislative branch of the government must determine the source of government funds, and that the court could not determine whether the legislature had chosen the most appropriate source. In *State ex rel. Lucero v. Marron*, 17 N.M. 304, 128 P. 485 (1962), the court declined to review an appropriation, stating:

[W]here there is an existing law, under which an institution has been established by the State and which was within the power of the legislature to establish, the legislative department of government must be the sole and exclusive judge of what is required for such institution in the way of expenses under existing laws.

17 N.M. at 323, 128 P. at 492.

2. The second question asked is whether monetary gifts, donations or bequests to the Supreme Court Law Library constitute "other state funds" under the Act. Section 2(E) of the Act defines "[o]ther state funds" as: "(1) unencumbered balances in state agency accounts, other than in internal service fund accounts, appropriated by the General

Appropriations Act of 1988; and (2) all revenue available to state agencies from sources other than the general fund, internal service funds, interagency transfers and federal funds."

The library, unlike some other agencies, does not have the authority to receive and use monetary gifts, donations or bequests.⁴ Because there is no continuing appropriation of such funds found in the Act or within the Supreme Court Law Library statutes, monetary gifts, donations or bequests made to the Library must be credited to the general fund. Section 6-10-3 NMSA 1978 provides, in relevant part:

Thirty days from the taking effect of Chapter 6, Article 10 NMSA 1978 all public money in the custody or under the control of any state official or agency obtained or received by any official or agency from any source, except as in Section 6-10-54 NMSA 1978 provided, shall be paid into the state treasury. It is the duty of every official or person in charge of any state agency receiving any money in cash or by check, draft or otherwise for or on behalf of the state or any agency thereof from any source, except as in Section 6-10-54 NMSA 1978 provided, to forthwith and before the close of the next succeeding business day after the receipt of the money to deliver or remit it to the state treasurer.

Section 6-4-2 NMSA 1978 provides: "There is created a fund to be known as the "general fund" to which the state treasurer shall credit all revenues not otherwise allocated by law. Expenditures from this fund shall be made only in accordance with appropriations authorized by the legislature." (Emphasis supplied.) Pursuant to these sections, all state officials must pay all money received, including gifts, donations and bequests, into the state treasury and the state treasurer credits the money to the general fund unless the legislature has allocated it otherwise.

For these reasons, we conclude that the legislature has not otherwise allocated money received by the Library by gift, bequest or donation and, therefore, such money must be credited to the general fund.

ATTORNEY GENERAL

HAL STRATTON Attorney General

GENERAL FOOTNOTES

[n1](#) See Op. Att'y Gen. No. 68-90 (1968) (Motor Vehicles Department may not charge a fee for use of public records, use of premises to examine public records, or for furnishing abstracts of public records; Op. Att'y Gen. No. 66-44 (1966) (Board of Examiners for Architects may charge only such fees as are permitted by statute); Op. Att'y Gen. No. 61-28 (1961) (Cattle Sanitary Board was not empowered to charge slaughtering establishments and overtime inspection fees.

[n2](#) See, e.g. Section 45-17-29 NMSA 1953 (authorizing director, appointed by the board of regents of agricultural college [the New Mexico State University] to administer the

Fruit & Vegetable Standards Act, to collect fees to defray the necessary expenses incurred in the formulating, issuing, administering and enforcing marketing orders, not to exceed five percent of the gross dollar volume of sales by growers); Section 73-26-5 NMSA 1953 (authorizing board of regents of the agricultural college [the New Mexico State University] to fix and charge tuition fees); Section 73-27-12 NMSA 1953 (authorizing board of regents of the New Mexico Institute of Mining & Technology to require compensation for services performed by the institution as the board deems reasonable); Section 75-2-6 NMSA 1953 (authorizing state engineer to receive certain fees for permits, inspections and certificates relating to the appropriation of water).

[n3](#) See, e.g., Section 45-17-27 NMSA 1953 (authorizing director administering the Fruit & Vegetable Standards Act to issue, administer and enforce the provisions of marketing orders for the marketing and grading of fruit; Section 73-26-5 NMSA 1953 (authorizing board of regents of the agricultural college [the New Mexico State University] to make all rules and regulations necessary for governing and managing the college [University]); Section 73-27-8 NMSA 1953 (authorizing board of regents of the New Mexico Institute of Mining & Technology to enact bylaws, rules and regulations for governing the school and "to do all and everything necessary in and about the premises with a view to promoting the best interests of said institution); Section 75-2-1 NMSA 1953 (empowering state engineer with "the general supervision of waters of this state and of the measurement, appropriation, distribution thereof and such other duties as required by law.")

[n4](#) See Section 16-2-19 1978 (providing that money derived from operating state parks or recreation areas or from gifts, bequests or donations does not revert to the general fund, but is to be used for developing and maintaining state parks and recreation areas), Section 18-3-5B(1) NMSA 1978 authorizing the Director of the Museum of New Mexico to receive and control gifts of funds.