

## Opinion No. 12-876

April 30, 1912

**BY:** FRANK W. CLANCY, Attorney General

**TO:** Hon. John S. Clark, Chairman of Senate Committee on Finance, Santa Fe, New Mexico.

### APPROPRIATIONS.

What can properly go in a general appropriation bill, and whether appropriations for state educational institutions can be made in such bill.

### OPINION

{\*20} On Saturday Mr. Hinkle, on behalf of your committee, submitted to me for consideration the broad question as to what can properly go in a general appropriation bill, and more specifically whether appropriations for the state educational institutions can be made in such a bill. While I have not had time to make as complete an investigation as I would like, yet I have become satisfied that the appropriations for the state educational institutions may properly be included in a general appropriation bill.

The doubt which may have arisen must refer to the language of Section 16 of Article IV of the Constitution, the portion relating to this subject being as follows:

"General appropriation bills shall embrace nothing but appropriations for the expense of the executive, legislative and judiciary departments, interest, sinking fund, payments of the public debt, public schools, and other expenses required by existing laws; but if any such bill contain any other matter only so much thereof as is hereby forbidden to be placed therein shall be void. All other appropriations shall be made by separate bills."

In the examination which I have been able to make I have not found, in connection with such prohibitory language in other constitutions, such words as refer to "other expenses required by existing laws," and yet we must look to this language for an answer to the questions submitted to me by Mr. Hinkle. Where we have any existing law which calls for the expenditure of a specific sum of money there would of course be doubt that such a law would fall within the meaning of the constitutional language, but it does not seem reasonable to limit the meaning of that language to no more than laws which call for particular sums of money. For instance, the {\*21} Legislative Assembly of the Territory in 1905 established the Camino Real which should extend from the state line between Colorado and New Mexico on the north to the state line between New Mexico and Texas near El Paso, and made a small appropriation for the beginning of the work, and provided for an annual tax to carry it on. This road has not been fully constructed and will not be for many years, but as long as the law establishing it exists that law requires, in the proper sense of the word, appropriations to carry on the work. Again, we have

established the National Guard of New Mexico and have from year to year made appropriations for its maintenance and support. Here we have an existing law which requires expenses for which appropriations must be made. We have by statute established a Bureau of Immigration, and while that statute continues in force it is an existing law which requires expenses to be met by appropriation. Numerous other similar instances might be given, including the state educational institutions. All of the institutions referred to, nine in number, have been established by territorial statute. Those statutes are still existing laws, and for the continuance and maintenance of the institutions expenses are required by existing laws.

It is no answer to this argument that these statutes do not call in direct terms for the appropriation of specific sums of money. While it is perfectly true that the legislature can refuse to make appropriations, and there is no power on earth which can coerce the legislature into performing such a duty, yet there is an obligation resting upon the legislature to furnish money for the expenses required by these existing laws. The fact that the expenses may vary from time to time, may increase or diminish, in proportion to the public needs or the public ability, in no way changes the condition that these existing laws call for expenses, and that there is at least a moral obligation resting upon the legislature. As before indicated, in the absence of any power to control the legislature nothing more than a moral obligation can exist.

I am firmly convinced that we would be within the authority given by the constitution if the legislature should include in the general appropriation bill the appropriations for the state educational institutions, as well as appropriations for the other purposes mentioned in the language hereinbefore quoted from the constitution. I am not prepared, nor do I think anyone could be, to answer the general question asked as to what can go in such an appropriation bill, as any attempt to enumerate would probably be a failure. It would be preferable to consider separately those matters as to which there may be controversy or doubt, as we are now doing with regard to the appropriations for the educational institutions.

Mr. Hinkle also asked me as to whether deficiencies could be taken care of in the same appropriation bill, and I think what I have already said would be equally applicable to deficiency appropriations.

As these questions may come up for consideration at the same time before committees of both houses, I will send a copy of this letter to the chairman of the house committee which has charge of such matters.