

Opinion No. 12-959

November 30, 1912

BY: FRANK W. CLANCY, Attorney General

TO: Hon. W. G. Sargent, State Auditor, Santa Fe, N. M.

CORPORATION COMMISSION.

State Auditor may draw warrants on voucher of Corporation Commission for all money remaining in contingent fund.

OPINION

{*115} I have received your letter of even date herewith in which you ask my opinion as to your authority to issue a warrant in payment of a voucher of the Corporation Commission which is in the form apparently of an order of the commission that the chairman is authorized to draw all money remaining of the appropriation of \$ 10,000 for the {*116} commission, to be used in defraying contingent expenses amounting to \$ 1,744.76.

The appropriation referred to must be the one which appears near the foot of page 209 of the officially-printed session laws of 1912, where with some unnecessary enumerations of particular objects of expenditure, in substance there is appropriated for "expenses of said commission from the fifteenth day of January until and including the thirtieth day of November, 1912," the sum of \$ 10,000, "or so much thereof as may be necessary for such purposes." On page 210 there is a provision that none of the money appropriated by that section "shall be paid out except upon itemized vouchers correctly setting forth the purpose of the expenditure, approved by the commission and filed with the state auditor, who, upon the filing of any such vouchers, shall draw his warrant for the amount thereof upon the state treasurer."

These statutory provisions clearly indicate an intention to make appropriations only for expenses up to November 30, 1912. If the \$ 1,744.78 before mentioned is for expenses actually incurred up to and including November 30, upon the presentation of itemized vouchers approved by the commission there can be no doubt that you should draw your warrant or warrants in payment of such expenses. If there should remain any further balance of the \$ 10,000 appropriation, there is no distinct authority in the statute for you to pay out that money, and the strict letter of the act seems to indicate that the money can be paid only for expenses incurred prior to December 1. I do not find that there is any appropriation for expenses of the commission after the beginning of the present fiscal year. It is inconceivable that the legislature deliberately intended to cripple the operations of the commission after November 30 by depriving it of any money for the payment of such expenses as were to be covered by the \$ 10,000, but I can not say that you are by the act clearly authorized to pay out money to be used for later accruing

expenses. I feel quite confident, however, that if you should continue to pay expenses of the commission from the remainder of this appropriation upon itemized vouchers approved by the commission as required in the act, no one will ever question the propriety of your action, as otherwise the commission will be unable to proceed with any of its business which requires the payment of actual expenses necessary to its work such as those particularly enumerated as the objects of the \$ 10,000 appropriation. Such things as traveling expenses, fees of witnesses, telegrams, stationery, printing, postage and box rent, must be paid as they accrue. Railroads and the United States will not give credit to the commission, nor can the attendance of witnesses be secured without paying their fees.

I believe that this is one of those cases where an officer in your position can in view of the necessities of the public service, safely disregard the precise letter of the law. This suggestion, of course, cannot extend to any payment of the salaries for which specific appropriations were made in the same section, as they are of specific amounts and limited to November 30, 1912.