

Opinion No. 15-1687

November 26, 1915

BY: FRANK W. CLANCY, Attorney General

TO: Mr. J. R. Hull, Clovis, New Mexico.

City council cannot expend more money for any improvement than that which has been appropriated.

OPINION

{*259} I have received your letter of the 23rd inst. in which you say that in your city it is imperative that a certain amount of street grading and installation of crossings take place, and that "the funds in the respective accounts are not adequate for the purposes outlined." You ask whether it is permissible to transfer such an amount as will be needed from the general fund of the city to the respective accounts where the inadequacy appears.

The only legislation as to which I have any information which could relate to the subject of your letter, is that which is to be found in Sections 3637 to 3639 of the new codification of the laws. The first of those sections requires the city council in the last quarter of each fiscal year to pass an annual appropriation bill for the next fiscal year, and to specify the objects and purposes for which such appropriations are made and the amounts appropriated for each object or purpose. It then provides that no further appropriations shall be made at any other time within the fiscal year unless first sanctioned by a majority of the legal voters of the city, either by a petition or at an election. The next section declares that no expenditures for an improvement to be paid for out of the general fund shall exceed in any one year the amount provided for such improvement in the annual appropriation bill, with a proviso that the council may, by a two-thirds vote, order any improvement, the necessity of which is caused by any casualty or accident happening after the annual appropriation is made.

I assume from what you write that the appropriations for the improvements of which you speak are exhausted or have been so depleted that they are now insufficient for the desired purposes, but that there is money in the city treasury in the general fund which it is desired to use if it can be legally done.

From an examination of the sections of the statutes already referred to, I do not see how the city council can lawfully expend more money for any improvement than that which had been appropriated for that improvement in the annual appropriation bill as that would be, in effect, making a further appropriation, prohibited in Section 3637, unless a majority of the legal voters of the city will {*260} sanction such appropriation. My advice is that an attempt should be made to obtain by means of a petition signed by

the voters, the sanction called for by the statute to the making of a further appropriation for those purposes for which the appropriations previously made are not adequate.