

**Opinion No. 22-3567**

August 26, 1922

**BY:** HARRY S. BOWMAN, Attorney General

**TO:** The State Tax Commission, Santa Fe, New Mexico.

**Excess Tax Collections Over Budget Estimates Applicable to Estimate for Succeeding Year.**

**OPINION**

{\*173} In reply to your oral request for an opinion regarding the construction of Section 6, Chapter 18, Laws of 1921, requiring that at the close of a calendar year any excess revenues over the amounts estimated in the budgets of expenses should be applied to the budget estimate for the next succeeding year, I wish to say:

The Section is in the following language:

"At the close of any calendar year should the actual revenues exceed the estimated budget estimates of expenses as so finally approved and certified, such excess moneys shall be applied on the budget estimate for the next succeeding year."

It is to be noted that the only excesses which are to be applied on the budget estimates for the succeeding years are those actual revenues which exceed the estimated budget estimates of expense. Any moneys, therefore, which remain over but which are not in excess of the estimated budget estimates of expenses, are not to be so applied. In other words, if all of the moneys collected do not exceed the budget estimates but still a portion of such moneys remain unexpended, such moneys or funds are not to be applied on the budget estimates for the next succeeding year. It is only such moneys as exceed the amounts named in the budget estimates that are to be treated as provided for in the section.

Also, such application of excesses can be made only at the close of the calendar year. They cannot be made at the close of the fiscal year, nor at the close of the school year. If there are such excesses their application to the budget estimates for the next succeeding year cannot be made until the close of the calendar year.

I am also of the opinion that this application of excess moneys cannot be held to apply to moneys raised prior to the enactment of chapter 188, Laws of 1921. Any moneys remaining in any of the funds which were raised in accordance with the provisions of the budget law prior to the year 1921, cannot be applied to the budget estimates for the succeeding years. The law cannot have any retroactive effect.