

Opinion No. 23-3673

February 21, 1923

BY: JOHN W. ARMSTRONG, Assistant Attorney General

TO: Requested by: Hon. Juan N. Vigil, State Auditor, Santa Fe, New Mexico.

Claims of any Fiscal Year Should be Paid, Whether Presented Within the Year or not, out of Appropriations for that Particular Year.

OPINION

{*19} We quote your request:

Please advise this office as to whether items of expense against the contingent funds of state departments, incurred during the 10th fiscal year, and for which no funds were available on December 1st, 1922, can be paid out of 11th fiscal year funds with the consent of the head of the department, which incurred the expense.

It would seem the Auditor shall not audit and neither shall the Treasurer pay, claims of such character. Under the provisions of Sections 5338 and 5339, New Mexico Statutes, Annotated, Codification 1915, these claims should be presented for allowance and, by you, reported to the Legislature. Legislative enactments alone will authorize you to audit and the Treasurer to pay such claims.

We assume the appropriations for the matters in question for the 10th fiscal year, have been exhausted. Otherwise relief for claimants might be available through the provisions of Section 8, Chapter 206, Session Laws of 1921. That section contemplates the payment of authorized obligations before any balance of appropriations, made to cover the 10th fiscal year, may be transferred to like appropriations for the 11th fiscal year.

The law presupposes that each department will conform its expenditures to the amount of the appropriations, but does not prevent the payment of tardy claims, provided they may be satisfied out of contingent funds actually appropriated for any certain year for such purposes.