

Opinion No. 23-3696

April 21, 1923

BY: JOHN W. ARMSTRONG, Assistant Attorney General

TO: Requested by: State Comptroller, Santa Fe, New Mexico.

Under Certain Circumstances One Budget Item May be Transferred to Another and Different Budget Item.

OPINION

{*46} We quote your inquiry as follows:

"Please advise me as to the legality of County School Superintendents, County Boards of Education or other school officials transferring and using unexpended balances of school districts to other school districts where the budget allowances have been exceeded, provided the expenditure of all the schools of the County wherein these transfers are made do not exceed the budget allowance for that County; in other words, can funds be transferred from one district to another although budget allowances have been made and approved for each separate district for maintenance expenses."

At the outset, it may be stated that no act may be authorized or permitted to use the fund in any Sinking Fund, Interest Fund, Road Fund or Building Fund for any purpose other than the specific purposes for which such fund was created.

The State Tax Commission shall approve County budgets and certify same to the County Clerks and County Treasurers of each county and state. Such budgets should be presented to the Boards {*47} of County Commissioners and duly recorded in the Commissioners' minutes. All officials having the right to allow any pay claims from the revenues provided by said budgets shall not allow nor approve claims in excess thereof; nor shall the County Treasurers pay any warrant in excess thereof -- Section 4, Chap. 188 S. L. 1921.

However, the State Tax Commission shall have power to amend or change such budgets and all amendments or changes shall be made a matter of record by the State Tax Commission -- Section 3, Chap. 188 S. L. 1921.

The State Comptroller is empowered, should the payments for any specific item in such budget not be equal to the amount as so allowed for such item in said budget to permit, in writing, the un-used remainder as so allowed to be used toward the payment of any other item in such budgets in which the necessity therefor exists. -- Sec. 5, Chap. 188 S. L. 1921.

The foregoing authority is somewhat restricted by Section 13 House Bill 165 (Act 1923), the Comptroller Bill. This Act makes the following provisions:

"Where not prohibited by existing law the State Comptroller may, upon the written request of the State Tax Commission, bearing the written approval of the Attorney General, authorize the transfer of funds from one budget item to another when such transfer is requested by the * * * Board having control of the expenditure of funds provided by such budget."

The budgets, in question, we understand were prepared and authorized by said Chapter 188 and are effective for the year 1923. From a consideration of the foregoing Acts, we conclude that these particular budget items may be changed or amended by the State Tax Commission and that the State Comptroller may authorize the transfer of funds to meet the present emergency. We are advised that certain schools will necessarily have to close at an unseasonable time, thereby working a great hardship on the pupils attending the same, unless such transfer of funds may be made at this time.

However, before such transfer may be made:

(a) The County Board of Education must make a request for such transfers to the State Tax Commission. Such request must state the necessity for such transfers and show that same may be made without injury to other districts.

(b) The State Tax Commission thereupon, if it may deem it advisable, should amend such budget and make the same a matter of record.

(c) The State Tax Commission then, in writing, should request the State Comptroller to make such transfer.

(d) This request must bear the written approval of the Attorney General.

(e) Thereupon the State Comptroller may permit, in writing, the unused remainder from other budget items to be used toward the payment of the item in question.

It may be said, in passing, that the new school Code will probably materially change the procedure for budgets hereafter made and promulgated.