

Opinion No. 31-216

July 22, 1931

BY: E. K. Neumann, Attorney General

TO: Dr. H. L. Kent, President, A. & M. College, State College, New Mexico.

{*89} Reference is made to your letter of July 19th, regarding the appropriations for cooperative work with the Biological Survey made under Chapter 119, Laws of 1919 and subsequent enactments for the destruction of predatory wild animals and rodent pest repression.

The Attorney General, Mr. Neumann, has also discussed this matter with Mr. John C. Gatlin, and we are now requested to express our opinion as to the correct method by which unexpended balances at the end of each fiscal year in such appropriation should be handled.

You, of course, being familiar with said Chapter 119 of the Laws of 1919, know that the appropriation made therein is a continuing one, and that such appropriation was made for the 8th fiscal year and each subsequent year thereafter until otherwise provided by law and that such appropriation was in the sum of \$ 25,000.00.

In 1923 the legislature by Chapter 52 made an appropriation of \$ 25,000.00 for the purpose of destroying predatory wild animals, and this appropriation was for each of the 12th and 13th fiscal years. This act provides that the total expenditures shall not "exceed the appropriation herein made."

By Chapter 32 of the Laws of 1925, substantially the same law was enacted, the appropriation being made for the 14th and 15th fiscal years. Again, in 1927, by Chapter 99, the appropriation in the same amount was made for the 16th and 17th fiscal years.

Under the 1929 law the said \$ 25,000.00 is to be divided into two funds, known as the Predatory Animal Fund and the Rodent Pest Fund. Proceeds from the sale of furs, skins and specimens, taken by hunters and sold under the provisions of the law, are to be credited to the Predatory Animal Fund, and under the law make up a portion of said appropriation.

It has heretofore been held, in Opinion No. 3953 dated August 5th, 1927, that Chapter 119 of the Laws of 1919 and Chapter 99 of the Laws of 1927 were separate and distinct, and that both were in full force and effect.

Chapter 52 of the Laws of 1931 also makes an appropriation in the sum of \$ 25,000.00 for the above named purpose, and it provides that the "total expenditures hereunder shall not exceed the sum of \$ 25,000.00 for each of said years." Under the above ruling, which we see no reason to change, and under the latter cited act, of course, the

appropriations under each would be available for use for the purpose for which appropriated.

However, we do not believe any of these laws confer, either expressly or by implication, any authority for the building up of any surplus fund over and above that necessary for actual use during the fiscal year.

In our opinion, the intent of our entire system of appropriations for the use of governmental agencies, {*90} bureaus, commissions, offices and departments is simply that each of such is to be limited in expenditures during the fiscal year to the amount of the appropriation and that any unexpended balance is to be applied on the appropriation for the succeeding fiscal year. And, it cannot be in addition thereto for the reason that most, if not all, of these acts provide that expenditures shall not exceed the appropriation made in any one year.

However, an exception in one particular must be noted. The receipts for costs, reimbursements, sale of skins, specimens, etc., under both acts are to be credited to the predatory Animal Fund and such receipts are a part of the appropriations mentioned. These receipts, or rather the unexpended portion thereof at the end of a fiscal year remain in the Fund continuously and only a sufficient sum each fiscal year is added thereto to make up the appropriation made by the Legislature in each act. Only to that extent is the fund a revolving one.

By way of summary, our conclusions are:

First, that under the acts subsequent to 1919 the expenditures from the appropriations made therein for the destruction of predatory animals and rodent pest repression are limited to the amount of the appropriation for each of the fiscal years for which such appropriation is made.

Second, that under the said Chapter 119 of the Laws of 1919 the appropriation consists of such proceeds as may be derived from the sale of furs, skins and specimens, plus a sufficient amount from the funds not otherwise appropriated to make up the \$ 25,000.00, but that expenditures from this appropriation are likewise limited to the sum of \$ 25,000.00 for each fiscal year.

Third, that the unexpended balance in said Funds derived solely from sale of specimens, etc., and reimbursements, etc., remain in said fund permanently under both acts, and are a part of the appropriations under each act for the next fiscal year.

Any unexpended balance in either of these appropriations, with the exception noted, must revert to the general fund until the legislature deems it wise to make a change in our system of accounting and handling of such funds.

By: Frank H. Patton,

Asst. Attorney General