

Opinion No. 31-4

January 9, 1931

BY: E. K. Neumann, Attorney General

TO: Hon. Adolph P. Hill, Assistant Comptroller, Santa Fe, New Mexico

{*20} Your letter of January 8th makes the following queries, to-wit:

1. Is it legal to allow the use of funds of one State department in another for the purpose of defraying the expense of the latter?
2. Is it legal and proper to transfer the automobile of one State Department to another, same having been purchased by the former from its operating fund, to be used by the latter in its operations?

It is my opinion, that generally speaking, the answer to both questions must be made in the negative. Each department of state is a separate entity, the funds received by each are for a specific purpose, and the expenses of each department are {*21} cared for from out of express appropriations or allowances from funds collected.

Sec. 112-125 New Mexico Statutes, 1929 Compilation, provides, how ever, that the State Board of Finance shall have power, in emergency cases, when there is a shortage of money in the current funds appropriated by the Legislature for any state institution or purpose due to delay in the collection of revenues provided therefor, to direct the transfer from any current fund in the state treasury, in which there may be a surplus over current needs, a sum sufficient to meet such emergency, the same to be replaced as soon as possible from receipts of revenue for such institution or purpose.

For this reason and under these circumstances, funds from one department may be used by another to defray current expenses, upon order of the State Board of Finance, to be repaid as soon as sufficient revenues are received by the latter department.

So, as stated, one department cannot transfer funds for the use of another, except in the manner hereinbefore mentioned, and neither can it transfer its property to another department for the latter's continuous and indefinite use. Property represents money, and to allow the transfer of property from one department to another would only provide an indirect means of doing something that the law prohibits directly.