

Opinion No. 33-631

July 19, 1933

BY: E. K. NEUMANN, Attorney General

TO: Honorable T. F. Keleher, Jr., Chairman Board of County Commissioners,
Albuquerque, New Mexico.

{*68} In your letter of July 13, 1933, you state that you have current balances in the following County funds and amounts, to-wit:

Roads \$ 4,110.60
Court house and
jail
repairs 3,588.29
Court house and
jail
real estate 78.60
Flood 5,684.21

Total \$ 13,461.70

and you request an opinion as to the legality of transferring sufficient from these funds to pay June salaries for County officers, or, in the event a transfer could not be had, if it is possible to borrow from these funds for the purpose stated to be repaid later.

It is my opinion that none of the funds set forth are subject to transfer in the usual sense. All are raised by a special tax for specific purposes. {*69} See Sections 33-5002-5009-5607, 5608, 1929 Code, and Section 134-513, 1929 Code.

You suggest that, if a transfer cannot be made, it might be proper to "borrow" from these funds for the purposes stated, pledging delinquent tax collections for repayment. Attention is called to the fact that such a transaction would not be a "transfer" because the money would not be "diverted." With this reasoning I cannot agree. A temporary transfer of moneys from one fund to another may not be a **diversion** of such funds (Gates vs. Sweitzer, 179 N.E. 837 Ill. 353, Cobb vs. Parnell, 183 Ark. 429, 36 S.W. (2nd) 388), nevertheless it would still be a **transfer**. The only authority granted by statute for the transfer of funds from one budget item to another is 134-513, 1929 Code, and this section, together with the others above mentioned, to my mind, prohibit even a temporary transfer of moneys from the funds stated in your letter.

The use of the word "borrow" is not strictly applicable to the transaction referred to. If it were the provisions of Section 10, Article IX of the New Mexico Constitution would prevent such a borrowing. My opinion is that the proposed "borrowing" of funds is in

reality a temporary transfer of such funds, and is not permissible in the present case under the statutes of this state.