

Opinion No. 34-788

July 14, 1934

BY: E. K. NEUMANN, Attorney General

TO: State Tax Commission, Santa Fe, New Mexico. Attn.: Benj. D. Luchini.

{*147} We have your letter of July the 13th, regarding the appropriation for the administration of Chapter 85, Laws of 1933, which is commonly known as the Income Tax Law. You state that the auditor and the state treasurer have refused to set-up funds for this purpose and that on July 1st, 1934 your office will have no funds with which to administer this Act.

The second paragraph of Section 47 of said Chapter 85 provides that the state treasurer shall create a fund which shall be known as the "Income Tax Administration Fund," and to which fund shall be paid and carried ten per cent of the income taxes which are finally paid over to the treasurer for distribution and from which fund the costs of the administration of the income tax law shall be paid.

Section 48 of said Chapter 85 made an appropriation for the enforcement of the Act for the remainder of the 21st fiscal year in the sum {*148} of \$ 4,000.00. For the 22nd fiscal year an appropriation of \$ 20,000.00 was made. It was provided that at the end of the 22nd fiscal year any surplus remaining in such appropriations shall be paid into the State Common School Fund or to the State School Equalization Fund when, and if, created by law. No mention whatever was made of any appropriation for the 23rd fiscal year, which began on July 1st, 1934.

Section 48, just mentioned, does not state from what fund this appropriation was to be made and we understand that it was actually made from the general appropriations account. At the end of the 21st fiscal year you had not used any of the appropriation of \$ 4,000.00 and that sum of money was returned to said general appropriations account at that time.

We also understand that for the 22nd fiscal year you were only allowed \$ 15,000.00, instead of the original \$ 20,000.00 appropriated and that the state treasurer now claims that this money was illegally paid from the general appropriations account and is requiring repayment from the Income Tax Administration Fund.

On April 18th, this office, by our Mr. Adams, Assistant Attorney General, rendered an opinion to the Deputy State Treasurer to the effect that the appropriation for which provision was made in Section 48 should be charged to the Income Tax Administration Fund, rather than to the general appropriation account.

In our opinion, the intention of said Sections 47 and 48 have been misinterpreted and we believe the correct construction of these two sections to be that it was the intention

of the legislature that the Income Tax Law be self-supporting, but, realizing that it would require some time to collect sufficient taxes to provide an adequate fund with which to administer the law, it was necessary that an appropriation be made. Therefore, we find the appropriation for the 21st and 22nd fiscal years in Section 48 of the Act, and it is our belief that this appropriation is properly chargeable to the general appropriations account.

After the ending of the 22nd fiscal year, the legislature, no doubt, assumed that the Income Tax Administration Fund would have a sufficient sum of money covered into it with which to continue the administration of the law and that it would, therefore, be no longer necessary to appropriate moneys for this purpose.

We are lead to this conclusion by reason of the fact that in said Section 48 the sum of \$ 4,000.00 is immediately provided for the remainder of the 21st fiscal year. Of course, this sum could not have been paid from the tax administration fund for the reason that at that time there was no such fund, as no taxes had been collected and no taxes could be collected for a period of several months after the effective date of the law.

For these reasons it is our belief that you are now entitled to administer the law from the tax administration fund to the extent of ten per cent of the income taxes collected; that this fund should be, if not already, set up by the state treasurer and paid upon proper vouchers submitted by the State Tax Commission; and that the appropriations for the 21st and 22nd fiscal years should not be charged against this ten per cent fund, but should be charged to the general appropriations account, and our letter of April the 18th, to the Deputy Treasurer, is hereby recalled.

By: FRANK H. PATTON,

Asst. Attorney General