

Opinion No. 36-1288

January 31, 1936

BY: FRANK H. PATTON, Attorney General

TO: Hon. James J. Connelly, State Treasurer, Santa Fe, New Mexico.

{*99} This is in reply to your letter of January 22nd, 1936, in which you ask for an opinion of this office concerning the legality of your paying state warrants drawn on the Port of Entry Suspense Fund.

This question involves a consideration of the validity of Sections 9 and 10 of Chapter 136, Laws of 1935, in the light of various provisions of our State Constitution.

The first question which suggests itself is whether or not these two sections make a valid appropriation within the provisions of Section 30 of Article IV of the State Constitution, which provides that "every law making an appropriation shall distinctly specify the sum appropriated and the object to which it is to be applied." I think this question is determined in favor of the validity of the appropriation by the case of *Gamble v. Velarde*, 13 P. (2nd) 559, 36 N.M. 262.

Another question which arises is whether or not the title to said Chapter 136 sufficiently embraces the subject of an appropriation such as is made in the two sections above referred to. The title does not mention the appropriation at {*100} all. It refers to the creation of ports of entry to aid in the regulation and use of the highways and in the collection of taxes, etc., and to the creation of the Port of Entry Board and the definition of its powers and duties.

In view of Section 16 Article IV and Section 30, Article IV of the Constitution, it seems apparent that the legislature intended to jealously guard the purse strings of the public treasury. However, I believe that the title of the Act sufficiently suggests an appropriation so as to comply with Section 16, Article IV above mentioned and the general policy of giving notice to members of the legislature of the contents of the bill. In other words, the appropriation, in my opinion, is germane to the main subject of the bill which is covered in the title.

It has also been suggested that Sections 9 and 10, above referred to, do nothing more than apportion certain funds and place them in a special fund provided for purposes mentioned in the act without specifically authorizing anyone to spend the moneys thus apportioned. There are a number of cases in which a distinction is made between "apportionment" and "appropriation." See 59 C.J. 247; *Dickinson v. Clibourn*, 187 S.W. 909, 125 Ark. 101; *Hunt v. Callaghan*, 257 P. 648, 32 Ariz. 235; *McCord v. Slavin*, 76 P. 1104, 143 Cal. 325; *Borden v. La. St. Bd. of Ed.* 123 So. 655, 168 La. 1005, 67 A.L.R. 1183; *Lionel's Cigar Store v. McFarland*, 111 So. 341, 162 La. 956; *State v. Mathews*, 273 P. 352, 134 Okla. 288; *Martin v. Brady*, 106 N.E. 266, 264 Ill. 178.

However, as stated in *Gamble vs. Velarde*, supra, and many other cases, an appropriation need not be made in any particular words and may be made by implication. The conclusion is almost irresistible in this case that the legislature intended the governing board, namely, the Port of Entry Board, to spend the moneys thus set aside for administration of the Act. Otherwise, what would have been the purpose of providing the fund? The whole Act strongly indicates that the legislature intended it to be placed in operation at once and provided money for that purpose. I, therefore am of the opinion that the Act does sufficiently authorize the expenditure of the moneys set aside to defray cost of administration.

Another question has been called to my attention, which has reference to the last sentence in Section 16 of Article IV of the State Constitution, which provides that "All other appropriations shall be made by separate bills." It will be noted also in Section 22 of Article IV of the Constitution it is provided that the Governor may approve or disapprove "any part or parts, item or items, of any bill appropriating money, and such parts or items approved shall become a law, and such as are disapproved shall be void, unless passed over his veto, as herein provided."

It is suggested that if the language just above quoted means what it says the Governor could veto any section or part of Chapter 136, Laws of 1935, and if not, was it not the intention of the constitution makers that bills appropriating money should be confined to that object alone? To this question I have not been able to find any satisfactory answer. It was raised in an Illinois case entitled *Martens v. Brady*, 106 N.E. 266, 264 Ill. 178, but was not decided. I am inclined to think that possibly the Governor might veto the appropriation items in any bill appropriating money but could not veto other portions of the bill without vetoing the entire act.

Other states have provisions in their constitutions almost identical with ours to the effect that appropriations not made in the general appropriation bill "shall be made by separate bills."

The authorities seem to be somewhat divided upon whether or not a constitutional provision of this kind requires that an act making a special appropriation be confined solely to the purpose of appropriating money and perhaps prescribing the conditions on which *{*101}* the money may be spent. There are a number of Montana cases holding that such a provision does not prevent legislation of a general character being included in a bill appropriating money. The first of these cases to which our attention has been directed is the case of *Hill v. Rae*, 158 P. 826, 52 Mont. 378, L.R.A. 1917 A. 495. To the same general effect see also *Commonwealth vs. Powell*, 94 Atl. 746, 249 Pa. 144; *State vs. Turner*, 164 N.W. 924, 37 N.D. 635, *Constitution Defense League vs. Waters*, 164 Atl. 613, 309 Pa. 545. Cases apparently holding to the contrary are *Woolf vs. Taylor*, 13 So. 688, 98 Ala. 254; *State ex rel. Davis vs. Smith (Mo.)* 75 S.W. (2nd) 828.

It might be well to mention also that some confusion has arisen over the language of Section 10 of the Act under discussion. It will be noted that in the first sentence of Section 10 it is provided that "all costs of administration of this Act shall be paid from the

respective funds for which collections are made by said ports of entry." At first glance, this would seem to leave the impression that the costs of administration are not to be paid from the suspense fund provided but from the funds for which collections are made. However, construing this sentence in connection with the remaining portions of the section, it is my opinion that the only significance to be given to it is that the funds for which collections are made are to finally bear the costs of the administration in proportion to the collections which are made for each fund but that the costs in the first instance are to be paid directly from the suspense fund created and later charged back to the respective funds for which collections are made.

While the questions above stated may be sufficient to create some slight doubt regarding the validity of the appropriation, I am inclined to resolve the doubt in favor of the legality of the expenditure of the moneys provided by said sections and it is therefore my opinion that you should pay warrants issued by the State Auditor and drawn upon the "Port of Entry Suspense Fund."

By: QUINCY D. ADAMS,

Assist. Atty. General