

Opinion No. 37-1668

June 8, 1937

BY: FRANK H. PATTON, Attorney General

TO: Mr. J. O. Garcia State Auditor Santa Fe, New Mexico

{*115} In your letter dated June 7 reference is made to Chapter 151 of the Laws of 1935, where an appropriation of \$ 7,500.00 is made for transportation of prisoners to the penitentiary and \$ 3,500.00 for extradition of prisoners.

You inquire whether any amount necessary for transportation and extradition of prisoners in excess of the sum specifically appropriated by the legislature may be legally set up into these accounts from the general appropriation act.

Section 30 of Article IV of the New Mexico Constitution provides in part as follows:

"Except interest or other payments on the public debt, money shall be paid out of the treasury only upon appropriations made by the legislature."

Section 7 of Chapter 151 of the Laws of 1935, under which we are operating for the balance of this fiscal year, provides in part as follows:

"No department shall spend in any year more than the amount appropriated for that year."

Public monies cannot lawfully be transferred from the general appropriation account to a separate or specific fund unless authorized by statute.

"Money cannot lawfully be transferred from the general fund to a separate or specific fund except as may be authorized by statute." -- 59 C. J. 232, Sec. 378.

Section 112-125, New Mexico Statutes Annotated, 1929 Compilation, permits the State Board of Finance to make transfers from one fund to another in certain specific instances which are not met by the fact situation presented in your letter.

In view of the foregoing, it is therefore my opinion that your inquiry should be answered in the negative.

Any claims against said funds over and above the amount specifically appropriated will have to be taken care of by a deficiency appropriation enacted by some future legislature. {*116} See Garcia v. Bursum, 10 N.M. 43.

Trusting the foregoing sufficiently answers your inquiry, I am

By FRED J. FEDERICI

Asst. Atty. Gen.