

Opinion No. 37-1698

July 1, 1937

BY: FRANK H. PATTON, Attorney General,

TO: Mr. Benjamin D. Luchini Chief Tax Commissioner Santa Fe, New Mexico

{*132} I return herewith the five orders addressed to the State Comptroller requesting a transfer of funds, which you submitted to us for approval under Section 134-513, 1929 Compilation. Three of these are for counties and two for municipalities.

In considering the legality of these transfers we must bear in mind three different statutes which are in force. Section 134-513, 1929 Compilation, authorizes the transfer of funds from one budget item to another, excepting only that no transfers may be made from the Sinking Fund, Interest Fund, Road Fund, or Building Fund.

Section 33-5904 limits the expenditure of funds to the amount set out by the budget, insofar as counties are concerned. The effect of this section is that, insofar as counties are concerned, no transfers may be made from one budget item to another where the expenditure of the amount transferred would exceed the budget estimate in the particular fund. Under that section, therefore, a transfer could be made only to a budget fund where collections were not sufficient to equal the amount budgeted thereby.

To remedy this situation the 1937 Legislature, by Chapter 233, authorized the State Comptroller, with the approval of the Tax Commission and this office, to revise the budget so as to authorize expenditures in excess of the original amount provided by the budget in any one fund but provided that the total of the budget items should not be increased. The effect of this provision is that in order to increase one budget fund, the amount in another must be decreased. Therefore, in each and every instance where it is sought to exceed the original budget item, the Comptroller and not the State Tax Commission should authorize such revision, with the approval of the State Tax Commission and the Attorney General.

In some cases both a revision of the budget and a transfer of funds may be made, and in such cases I see no reason why the revision and the transfer may not be authorized in the same order, since the discretion for the issue of such an order in both instances rests with the State Comptroller. With these statutory provisions in mind I have examined each of the enclosed orders.

The order made upon the request of the City of Las Vegas shows that the only thing sought by that request is authority to exceed the budget by \$ 1,000.00 in the General Fund, and that the money is available in that fund. It does not show, however, that the total of the municipal budget items will not be increased as provided by Chapter 233, Laws of 1937.

The same thing is true with reference to the request by the Town of Alamogordo. Both of these should be made by the State Comptroller and submitted to the State Tax Commission and this office for approval.

The three county requests are returned without our approval. It is not clear in any of them that when the transfer requested is made and expended it will not exceed the budget, and will not violate Section 33-5904, 1929 Compilation, above referred to. If it does exceed that amount the authority therefore must be made under Chapter 233 of the Laws of 1937, and when that authority is sought it must be shown that the revision of the budget will not result in increasing the total of the budgets of all county funds.

With reference to the request by Socorro County, mention is made in {~~*133~~} the letter from the County Treasurer to the effect that there is an excess in the road fund. None of the monies in the road fund can be transferred to any other fund.

With reference to the order as to Dona Ana County there is a request for transfer from the judgment account of the county road fund to reimburse that fund for an erroneous payment heretofore made. I think that this is proper and that order is approved as to that item.

I have no doubt but what some of these transfers may be absolutely proper, but there is no way whereby we can judge of this without the necessary showing in the request prepared by your office or by the Comptroller's office and submitted to us for examination. When proper authorizations are made showing compliance with the provisions of these three sections, they will be approved.

By A. M. FERNANDEZ,

Asst. Atty. Gen.